

**United States Court of Appeals
for the District of Columbia Circuit**

No. 23-3045

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LARRY RENDALL BROCK,

Defendant-Appellant.

*On Appeal from the United States District Court for the District of Columbia
in No. 1:21-cr-00140-JDB-1, John D. Bates, U.S. Senior District Judge*

**PUBLIC JOINT APPENDIX
SEALED MATERIAL IN SEPARATE SUPPLEMENT
VOLUME I OF II, Pages A1-A607**

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July 10, 2023

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**U.S. District Court
District of Columbia (Washington, DC)
CRIMINAL DOCKET FOR CASE #: 1:21-cr-00140-JDB All Defendants**

Case title: USA v. BROCK

Date Filed: 02/19/2021

Magistrate judge case number: 1:21-mj-00023-GMH

Assigned to: Judge John D. Bates

Appeals court case number: 23-3045

Defendant (1)

LARRY RENDALL BROCK

represented by **Charles Burnham**
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ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18:1752(a)(2); TEMPORARY RESIDENCE
OF THE PRESIDENT; Entering and
Remaining in a Restricted Building or
Grounds
(1)

18:1512(c)(2) and 2; TAMPERING WITH
A WITNESS, VICTIM OR INFORMANT;
Obstruction of an Official Proceeding and
Aiding and Abetting.
(1s)

18:1752(a)(2); TEMPORARY RESIDENCE
OF THE PRESIDENT; Disorderly and
Disruptive Conduct in a Restricted Building
or Grounds
(2)

18:1752(a)(1); TEMPORARY RESIDENCE
OF THE PRESIDENT; Entering and
Remaining in a Restricted Building or
Grounds.
(2s)

Disposition

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to SIX (6) months on
Count 1s to run concurrently with Counts
2s, 3s, 4s, 5s and 6s. No period of
supervised release imposed. Special
Assessment of \$10.00.

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to TWELVE (12)
months on Count 2s to run concurrently
with Counts 1s, 3s, 4s, 5s and 6s. TWELVE
(12) months of Supervised to run
concurrently with Counts 1s and 3s. Special
Assessment of \$25.00.

18:1752(a)(3), 2; TEMPORARY
RESIDENCE OF THE PRESIDENT;
Impeding Ingress and Egress in a Restricted
Building or Grounds and Aiding and
Abetting
(3)

18:1752(a)(2); TEMPORARY RESIDENCE
OF THE PRESIDENT; Disorderly and
Disruptive Conduct in a Restricted Building
or Grounds.
(3s)

40:5104(e)(2)(A); FEDERAL STATUTES,
OTHER; Entering and Remaining on the
Floor of Congress
(4)

40:5104(e)(2)(A); VIOLENT ENTRY AND
DISORDERLY CONDUCT ON CAPITOL
GROUNDS; Entering and Remaining on the
Floor of Congress.
(4s)

40:5104(e)(2)(D); FEDERAL STATUTES,
OTHER; Disorderly Conduct in a Capitol
Building
(5)

40:5104(e)(2)(D); VIOLENT ENTRY AND
DISORDERLY CONDUCT ON CAPITOL
GROUNDS; Disorderly Conduct in a
Capitol Building.
(5s)

40:5104(e)(2)(E), 2; FEDERAL
STATUTES, OTHER; Impeding Passage
Through the Capitol Grounds or Buildings
and Aiding and Abetting
(6)

40:5104(e)(2)(G); VIOLENT ENTRY AND
DISORDERLY CONDUCT ON CAPITOL
GROUNDS; Parading, Demonstrating, or
Picketing in a Capitol Building.
(6s)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Highest Offense Level (Terminated)

None

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to TWELVE (12)
months on Count 3s to run concurrently
with Counts 1s, 2s, 4s, 5s and 6s. TWELVE
(12) months of Supervised to run
concurrently with Counts 1s and 2s. Special
Assesment of \$25.00.

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to SIX (6) months on
Count 4s to run concurrently with Counts
1s, 2s, 3s, 5s and 6s. No period of
supervised release imposed. Special
Assesment of \$10.00.

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to SIX (6) months on
Count 5s to run concurrently with Counts
1s, 2s, 3s, 4s and 6s. No period of
supervised release imposed. Special
Assesment of \$10.00.

Oral motion by government to dismiss
count; heard and GRANTED.

Defendant sentenced to SIX (6) months on
Count 4s to run concurrently with Counts
1s, 2s, 3s, 4s, 5s. No period of supervised
release imposed. Special Assesment of
\$10.00.

Disposition

Complaints

COMPLAINT in Violation of 18:1752(a)
and 40:5104(e)(2)

Disposition

Plaintiff

USA

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TERMINATED: 10/12/2022

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Date Filed	#	Docket Text
01/09/2021	1	SEALED COMPLAINT as to LARRY RENDALL BROCK (1). (Attachments: # 1 Affidavit in Support) (zstd) [1:21-mj-00023-GMH] (Entered: 01/11/2021)
01/09/2021	3	MOTION to Seal Case by USA as to LARRY RENDALL BROCK. (Attachments: # 1 Text of Proposed Order)(zstd) [1:21-mj-00023-GMH] (Entered: 01/11/2021)
01/09/2021	4	ORDER granting 3 Motion to Seal Case as to LARRY RENDALL BROCK (1). Signed by Magistrate Judge G. Michael Harvey on 1/9/2021. (zstd) [1:21-mj-00023-GMH] (Entered: 01/11/2021)
01/10/2021		Arrest of LARRY RENDALL BROCK in US District Court Northern District of Texas (Fort Worth). (bb) [1:21-mj-00023-GMH] (Entered: 01/25/2021)
01/10/2021		Case unsealed as to LARRY RENDALL BROCK (zstd) [1:21-mj-00023-GMH] (Entered: 02/19/2021)
01/15/2021	5	Rule 5(c)(3) Documents Received as to LARRY RENDALL BROCK from US District Court Northern District of Texas (Fort Worth) Case Number 4:21-mj-17 (BJ) (bb) [1:21-mj-00023-GMH] (Entered: 01/25/2021)
02/11/2021	6	NOTICE OF ATTORNEY APPEARANCE Justin Todd Sher appearing for USA. (zltp) [1:21-mj-00023-GMH] (Entered: 02/11/2021)
02/19/2021	7	INFORMATION as to LARRY RENDALL BROCK (1) count(s) 1, 2, 3, 4, 5, 6. (zstd) (Entered: 02/19/2021)
02/23/2021		Set/Reset Hearings as to LARRY RENDALL BROCK: Arraignment set for 2/25/2021 at 10:00 AM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 02/23/2021)
02/23/2021	9	NOTICE OF ATTORNEY APPEARANCE: Charles Burnham appearing for LARRY RENDALL BROCK (Burnham, Charles) (Entered: 02/23/2021)
02/23/2021	10	NOTICE OF SUBSTITUTION OF COUNSEL as to USA. Attorney Ayers-Perez, April Holly added. (Ayers-Perez, April) (Entered: 02/23/2021)
02/25/2021		Minute Entry: Arraignment as to LARRY RENDALL BROCK (1) held on 2/25/2021 before Judge John D. Bates on Counts 1,2,3,4,5 and 6: Plea of NOT GUILTY entered by LARRY RENDALL BROCK (1) as to all Counts. Parties discussed discovery. Status Conference set for 4/27/2021 at 10:00 AM in Telephonic/VTC before Judge John D. Bates. The Court finds in the interest of justice (XT) that the time between 02/25/2021 and 04/27/2021 shall be excluded from the speedy trial calculation. Defendant remains on release. Court Reporter: Bryan Wayne; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez. (tb) (Entered: 02/25/2021)
03/15/2021	11	MOTION to Modify Conditions of Release by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit, # 2 Exhibit)(Burnham, Charles) (Entered: 03/15/2021)

03/15/2021		MINUTE ORDER as to LARRY RENDALL BROCK:: Upon consideration of 11 defendants Motion to Modify Conditions of Release, and the entire record herein, it is hereby ORDERED that the government shall file any opposition to defendants motion by not later than March 25, 2021. SO ORDERED by Judge John D. Bates on 03/15/2021. (tb) (Entered: 03/15/2021)
03/22/2021		NOTICE of Provisional/Government Not Certified Status re 11 MOTION to Modify Conditions of Release . Your attorney renewal/government certification has not been received. As a result, your membership with the U.S. District & Bankruptcy Courts for the District of Columbia is not in good standing, and you are not permitted to file. Pursuant to Local Criminal Rule 57.21.1, you must immediately correct your membership status by following the appropriate instructions on this page of our website: https://www.dcd.uscourts.gov/attorney-admissions-and-renewal-information . Please be advised that the presiding judge in this case has been notified that you are currently not in good standing to file in this court. Renewal Due by 3/29/2021. (znmw) (Entered: 03/22/2021)
03/25/2021	12	RESPONSE by USA as to LARRY RENDALL BROCK re 11 MOTION to Modify Conditions of Release (Attachments: # 1 Exhibit Government Exhibit A, # 2 Exhibit Government Exhibit B)(Ayers-Perez, April) (Entered: 03/25/2021)
04/12/2021	13	ORDER Setting Conditions of Release as to LARRY RENDALL BROCK (1) Release. Approved by Judge John D. Bates on 02/25/2021. (tb) (Entered: 04/12/2021)
04/17/2021	14	ORDER: Granting in part and denying in part 11 defendant's Motion to Modify Conditions of Release as to LARRY RENDALL BROCK. See text of Order for details.. Signed by Judge John D. Bates on 04/16/2021. (tb) (Entered: 04/17/2021)
04/27/2021		Minute Entry: Status Conference as to LARRY RENDALL BROCK held on 4/27/2021 before Judge John D. Bates: Oral motion by defendant to modify conditions of release; heard and taken under advisement. Parties along with PSA shall submit proposed language regarding adjusting release conditions. Status Conference set for 6/24/2021 at 11:00 AM in Telephonic/VTC before Judge John D. Bates. The Court finds in the interest of justice (XT) that the time between 04/27/2021 and 06/24/2021 shall be excluded from the speedy trial calculation. Defendant remains on release. Court Reporter: Bryan Wayne; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez; Pretrial Officer: Andre Sidbury. (tb) (Entered: 04/27/2021)
04/27/2021	15	ENTERED IN ERROR.....Unopposed MOTION for Protective Order by USA as to LARRY RENDALL BROCK. (Attachments: # 1 Text of Proposed Order)(Ayers-Perez, April) Modified on 4/28/2021 (zhsj). (Entered: 04/27/2021)
04/27/2021		NOTICE OF CORRECTED DOCKET ENTRY: as to LARRY RENDALL BROCK re 15 Unopposed MOTION for Protective Order was entered in error, and however the judge has already signed the order. See Docket Entry 16 . (zhsj) (Entered: 04/28/2021)
04/28/2021	16	PROTECTIVE ORDER setting forth procedures for handling confidential material; allowing designated material to be filed under seal as to LARRY RENDALL BROCK. Signed by Judge John D. Bates on 04/28/2021. (tb) (Entered: 04/28/2021)
05/12/2021	17	ORDER modifying conditions of pretrial release as to LARRY RENDALL BROCK. See text of Order for details. SO ORDERED by Judge John D. Bates on 05/12/2021. (tb) (Entered: 05/13/2021)
06/21/2021	20	NOTICE <i>cf</i> Discovery Letter by USA as to LARRY RENDALL BROCK (Attachments: # 1 Notice to Counsel/Party Discovery Letter)(Ayers-Perez, April) (Entered: 06/21/2021)

06/23/2021	22	MOTION to Modify Conditions of Release by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit transcript)(Burnham, Charles) (Entered: 06/23/2021)
06/23/2021	24	SUPERSEDING INDICTMENT as to LARRY RENDALL BROCK (1) count(s) 1s, 2s, 3s, 4s, 5s, 6s. (zhsj) (Entered: 06/24/2021)
06/23/2021	26	MOTION to Reconsider Electronic Monitoringby LARRY RENDALL BROCK. (See Docket Entry 22 to View Document). (zhsj) (Entered: 06/25/2021)
06/24/2021	23	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 06/24/2021)
06/24/2021		Minute Entry: Arraignment/Status Hearing as to LARRY RENDALL BROCK (1) held on 6/24/2021 before Judge John D. Bates on Counts 1s,2s,3s,4s,5s and 6s. Plea of NOT GUILTY entered by LARRY RENDALL BROCK as to Counts 1s through 6s. Response to motion to modify conditions of release 22 due by 6/30/2021. Reply due by 7/2/2021. Status Conference set for 8/25/2021 at 04:00 PM in Telephonic/VTC before Judge John D. Bates. The Court finds in the interest of justice (XT) that the time between 06/24/2021 and 08/25/2021 shall be excluded from the speedy trial calculation. Defendant remains on release. Court Reporter: Lisa Moreira; Defense Attorney: Charles Burnham; Pretrial Officer: John Copes. (tb) (Entered: 06/24/2021)
06/30/2021	27	RESPONSE by USA as to LARRY RENDALL BROCK re 22 MOTION to Modify Conditions of Release , 26 MOTION for Reconsideration (Attachments: # 1 Exhibit Gov't Exhibit A, # 2 Exhibit Gov't Exhibit B)(Ayers-Perez, April) (Entered: 06/30/2021)
07/02/2021	28	REPLY TO OPPOSITION to Motion by LARRY RENDALL BROCK re 26 MOTION for Reconsideration (Burnham, Charles) (Entered: 07/02/2021)
07/20/2021	29	SUPPLEMENT by LARRY RENDALL BROCK re 26 MOTION for Reconsideration <i>cf Electronic Monitoring</i> (Burnham, Charles) (Entered: 07/20/2021)
08/16/2021	30	MEMORANDUM OPINION & ORDER granting 22 Motion to Modify Conditions of Release as to LARRY RENDALL BROCK. See text of Memorandum Opinion & Order for details. Signed by Judge John D. Bates on 08/16/2021. (tb) (Entered: 08/16/2021)
08/24/2021	31	NOTICE <i>cf Discovery Status Memo</i> by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 08/24/2021)
08/25/2021	32	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 08/25/2021)
08/25/2021	33	NOTICE <i>cf Discovery Letter</i> by USA as to LARRY RENDALL BROCK (Attachments: # 1 Supplement)(Ayers-Perez, April) (Entered: 08/25/2021)
08/25/2021		Minute Entry: Status Conference as to LARRY RENDALL BROCK held on 8/25/2021 before Judge John D. Bates: Parties discussed posture of case. Status Conference set for 10/25/2021 at 11:00 AM in Telephonic/VTC before Judge John D. Bates. The Court finds in the interest of justice (XT) that the time between 08/25/2021 and 10/25/2021 shall be excluded from the speedy trial calculation. Defendant remains on release. Court Reporter: Jan Dickman; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez. (tb) (Entered: 08/26/2021)
09/03/2021		MINUTE ORDER as to LARRY RENDALL BROCK: In light of 30 the Court's Memorandum Opinion & Order granting 22 defendant's unsealed Motion to Reconsider Electronic Monitoring or in the Alternative to Modify Certain Restrictions on Travel, it is hereby ORDERED that 19 defendant's sealed Motion to Reconsider Electronic

		Monitoring or in the Alternative to Modify Certain Restrictions on Travel and 18 defendant's accompanying Motion to Seal are TERMINATED. SO ORDERED by Judge John D. Bates on 09/03/2021. (tb) (Entered: 09/03/2021)
09/23/2021	34	NOTICE <i>cf Filing Discovery Status Update</i> by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 09/23/2021)
10/21/2021	35	Joint MOTION to Continue <i>October 25, 2021 Status Conference</i> , Joint MOTION to Exclude <i>Time under the Speedy Trial Act</i> by USA as to LARRY RENDALL BROCK. (Attachments: # 1 Text of Proposed Order)(Ayers-Perez, April) (Entered: 10/21/2021)
10/21/2021		MINUTE ORDER: Upon consideration of 35 the United States' Joint Motion to Continue October 25, 2021 Status Conference for 60 Days, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that the status conference scheduled for October 25, 2021 shall be RESCHEDULED to December 22, 2021 at 11:00 a.m. in Telephonic/VTC; and it is further ORDERED that the time between October 25, 2021 and December 22, 2021 shall be excluded from the speedy trial calculation in the interest of justice. SO ORDERED. Signed by Judge John D. Bates on 10/21/2021. (lcjdb2) (Entered: 10/21/2021)
10/21/2021		Set/Reset Hearings as to LARRY RENDALL BROCK: Status Conference Rescheduled to 12/22/2021 at 11:00 AM in Telephonic/VTC before Judge John D. Bates. (jth) (Entered: 10/22/2021)
12/03/2021	36	NOTICE <i>cf Filing Discovery Status Update</i> by USA as to LARRY RENDALL BROCK (Attachments: # 1 Supplement Attachment A, # 2 Supplement Attachment B)(Ayers-Perez, April) (Entered: 12/03/2021)
12/03/2021	37	NOTICE <i>cf Filing Discovery Status Update</i> by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 12/03/2021)
12/21/2021	38	MOTION to Continue <i>status hearing</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 12/21/2021)
12/21/2021		MINUTE ORDER: Upon consideration of 38 defendant's Motion to Continue Status, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that the status conference scheduled for December 22, 2021 shall be RESCHEDULED to January 27, 2022 at 11:00 AM in Telephonic/VTC; and it is further ORDERED that the time between December 22, 2021 and January 27, 2022 shall be excluded from the speedy trial calculation in the interest of justice as the continuance will afford defendant more time to review discovery and explore a possible plea. SO ORDERED. Signed by Judge John D. Bates on 12/21/2021. (lcjdb2) (Entered: 12/21/2021)
01/18/2022	39	Consent MOTION to Modify Conditions of Release by LARRY RENDALL BROCK. (Attachments: # 1 Text of Proposed Order)(Burnham, Charles) (Entered: 01/18/2022)
01/18/2022	40	Consent MOTION minor change in time of status hearing by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 01/18/2022)
01/18/2022		MINUTE ORDER: Upon consideration of 40 defendant's Motion to Change Time of Status, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that the status conference scheduled for January 27, 2022 at 11:00 AM shall be RESCHEDULED to January 27, 2022 at 3:00 PM in Telephonic/VTC. SO ORDERED. Signed by Judge John D. Bates on 1/18/2022. (lcjdb2) (Entered: 01/18/2022)
01/18/2022	41	ORDER granting 39 Motion to Modify Conditions of Release as to LARRY RENDALL BROCK. See text of Order for details. Signed by Judge John D. Bates on 1/18/2022.

		(lcjdb2) (Entered: 01/18/2022)
01/19/2022		Set/Reset Hearings as to LARRY RENDALL BROCK: Status Conference reset for 1/27/2022 at 03:00 PM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 01/19/2022)
01/26/2022		Set/Reset Hearings as to LARRY RENDALL BROCK: Status Conference reset for 1/28/2022 at 02:30 PM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 01/26/2022)
01/27/2022	42	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 01/27/2022)
01/27/2022		MINUTE ORDER: It is hereby ORDERED that the status conference scheduled for January 27, 2022 is hereby RESCHEDULED to January 31, 2022 at 10:00 AM via Zoom; and it is further ORDERED that the time between January 27, 2022 and January 31, 2022 shall be excluded from the speedy trial calculation in the interest of justice as the continuance will enable defendant to attend the status conference and participate in his defense. SO ORDERED. Signed by Judge John D. Bates on 1/27/2022. (lcjdb2) (Entered: 01/27/2022)
01/27/2022		Set/Reset Hearings as to LARRY RENDALL BROCK: Status Conference set for 1/31/2022 at 10:00 AM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 01/27/2022)
01/31/2022		Minute Entry: Status Conference as to LARRY RENDALL BROCK held on 1/31/2022 before Judge John D. Bates: Parties discussed posture of the case, established a motions and trial schedule. Another Video Status Conference is set for 4/8/2022 at 10:30 AM in Telephonic/VTC before Judge John D. Bates. Defense Motions are due by 6/24/2022, Government Responses are due by 7/15/2022, any Replies are due by 7/29/2022, The Court will await receipt of the motions before scheduling a motions hearing. Jury Trial is set for 11/14/2022 at 9:30 AM in Courtroom 30A (In Person) before Judge John D. Bates. The Court finds in the interest of justice (XT) that the time between 1/31/2022 and 11/14/2022 shall be excluded from the speedy trial calculation. Defendant remains on release. Court Reporter: Lisa Moreira; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez. (jth) (Entered: 01/31/2022)
02/10/2022	43	NOTICE <i>cf</i> Filing United States' Memorandum Regarding Status <i>cf</i> Discovery as <i>cf</i> February 9, 2022 by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 02/10/2022)
04/08/2022	44	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 04/08/2022)
04/08/2022		Minute Entry for Video Status Conference proceeding held before Judge John D. Bates as to LARRY RENDALL BROCK on 4/8/2022. Defendant remains on release. US Attorneys: April Ayers-Perez and Emily Miller; Defense Attorney: Charles Burnham; Court Reporter: Sara Wick. (zgdf) (Entered: 04/08/2022)
06/24/2022	45	Consent MOTION for Extension of Time to <i>file Pretrial Motions (July 1)</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 06/24/2022)
06/24/2022		MINUTE ORDER: Upon consideration of 45 defendant's consent motion for extension of time to file, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that defendant shall file any pre-trial motions by not later than July 1, 2022, the government shall file any responses by not later than July

		22, 2022, and defendant shall file any replies by not later than August 5, 2022. SO ORDERED. Signed by Judge John D. Bates on 6/24/2022. (lcjdb2) (Entered: 06/24/2022)
06/28/2022		Set/Reset Deadlines as to LARRY RENDALL BROCK: Motion due by 7/1/2022. Response due by 7/22/2022. Reply due by 8/5/2022. (tb) (Entered: 06/28/2022)
07/01/2022	46	MOTION to Dismiss Count <i>One</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 07/01/2022)
07/01/2022	47	MOTION to Change Venue <i>and to Adopt Motion in Related Case</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 07/01/2022)
07/01/2022	48	MOTION to Compel <i>Discovery</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 07/01/2022)
07/01/2022	49	MOTION to Compel <i>Discovery on Selective Prosecution</i> by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit)(Burnham, Charles) (Entered: 07/01/2022)
07/01/2022	50	MOTION for Joinder Motion in Related Case by LARRY RENDALL BROCK. (See Docket Entry 47 to View Document). (zhsj) (Entered: 07/05/2022)
07/05/2022	51	MOTION for a Bill of Particulars by LARRY RENDALL BROCK. (See Docket Entry 46 to View Document). (zhsj) (Entered: 07/05/2022)
07/22/2022	52	RESPONSE by USA as to LARRY RENDALL BROCK re 47 MOTION to Change Venue <i>and to Adopt Motion in Related Case</i> (Ayers-Perez, April) (Entered: 07/22/2022)
07/22/2022	53	RESPONSE by USA as to LARRY RENDALL BROCK re 48 MOTION to Compel <i>Discovery</i> (Ayers-Perez, April) (Entered: 07/22/2022)
07/22/2022	54	RESPONSE by USA as to LARRY RENDALL BROCK re 46 MOTION to Dismiss Count <i>One</i> (Ayers-Perez, April) (Entered: 07/22/2022)
07/22/2022	55	RESPONSE by USA as to LARRY RENDALL BROCK re 49 MOTION to Compel <i>Discovery on Selective Prosecution</i> (Ayers-Perez, April) (Entered: 07/22/2022)
07/22/2022	56	MOTION to Adopt Related Case in United States v. McHugh, No. 1:21-cr-453 by USA as to LARRY RENDALL BROCK. (See Docket Entry 52 to View Document). (zhsj) (Entered: 07/25/2022)
08/31/2022	57	ORDER denying 46 defendant's motion to dismiss count I; granting in part and denying in part 47 defendant's motion to adopt motion in other case and for change of venue; denying 48 defendant's motion to compel discovery; and denying 49 motion to compel discovery on selective prosecution. See text of Order and accompanying Memorandum Opinion for details. Signed by Judge John D. Bates on 8/31/2022. (lcjdb3) (Entered: 08/31/2022)
08/31/2022	58	MEMORANDUM OPINION. Signed by Judge John D. Bates on 8/31/2022. (lcjdb3) (Entered: 08/31/2022)
08/31/2022		MINUTE ORDER: The parties are hereby ORDERED to appear before the Court for a status conference on September 22, 2022 at 12:00 PM in Telephonic/VTC. SO ORDERED. Signed by Judge John D. Bates on 8/31/2022. (lcjdb2) (Entered: 08/31/2022)
09/01/2022		Set/Reset Hearings as to LARRY RENDALL BROCK: Status Conference set for 9/22/2022 at 12:00 PM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 09/01/2022)
09/21/2022	59	MOTION to Continue by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit) (Burnham, Charles) (Entered: 09/21/2022)

09/22/2022		Minute Entry for Status Conference as to LARRY RENDALL BROCK held on 9/22/2022 before Judge John D. Bates: Status Report due by 10/6/2022. Bond Status of Defendant: Personal Recognizance; Court Reporter: Bryan Wayne; Defense Attorney: Charles Burnham; US Attorney: Arvind Lal. (zjch,) (Entered: 09/22/2022)
10/06/2022	60	Joint STATUS REPORT by LARRY RENDALL BROCK (Burnham, Charles) (Entered: 10/06/2022)
10/11/2022		MINUTE ORDER: Upon consideration of 59 defendant's motion to continue, and the entire record herein, and in light of the fact that this case has been pending for 22 months and defendant has not presented sufficient good cause to further delay its resolution, it is hereby ORDERED that the motion is DENIED. The trial in this case remains set to commence on November 14, 2022. Signed by Judge John D. Bates on 10/11/2022. (lcjdb2) (Entered: 10/11/2022)
10/12/2022	61	NOTICE OF SUBSTITUTION OF COUNSEL by USA as to LARRY RENDALL BROCK. (Meisel, Douglas) Modified Text on 10/13/2022 (zhsj). (Entered: 10/12/2022)
10/18/2022		MINUTE ORDER: It is hereby ORDERED that the parties shall file any motions in limine by not later October 26, 2022; it is further ORDERED that the parties shall file proposed voir dire questions and jury instructions by not later than October 31, 2022; it is further ORDERED that the parties shall file responses to motions in limine by not later than November 1, 2022; it is further ORDERED that the parties shall file replies in support of motions in limine by not later than November 4, 2022; and it is further ORDERED that a pretrial conference is set for November 7, 2022 at 11:00 AM in Telephonic/VTC. SO ORDERED. Signed by Judge John D. Bates on 10/18/2022. (lcjdb2) (Entered: 10/18/2022)
10/19/2022		Set/Reset Deadlines/Hearings as to LARRY RENDALL BROCK: Motion in Limine due by 10/26/2022. Responses due by 11/1/2022. Replies due by 11/4/2022. Pretrial Conference set for 11/7/2022 at 11:00 AM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 10/19/2022)
10/20/2022	62	MOTION to Strike <i>Portions of the Superseding Indictment</i> by USA as to LARRY RENDALL BROCK. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Ayers-Perez, April) (Entered: 10/20/2022)
10/21/2022		MINUTE ORDER: It is hereby ORDERED that, by not later than October 28, 2022, defendant shall file a response to 62 the government's motion to strike portions of the superseding indictment. Signed by Judge John D. Bates on 10/21/2022. (lcjdb2) (Entered: 10/21/2022)
10/24/2022		Set/Reset Deadlines as to LARRY RENDALL BROCK: Response due by 10/28/2022. (tb) (Entered: 10/24/2022)
10/26/2022	63	First MOTION in Limine by USA as to LARRY RENDALL BROCK. (Ayers-Perez, April) (Entered: 10/26/2022)
10/29/2022	64	RESPONSE by LARRY RENDALL BROCK re 62 MOTION to Strike <i>Portions of the Superseding Indictment</i> (Burnham, Charles) (Entered: 10/29/2022)
10/31/2022		MINUTE ORDER: Upon consideration of the government's 62 unopposed motion to strike portions of the superseding indictment, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that the language referring to the "Vice President-elect" in Counts Two and Three of the superseding indictment is hereby STRICKEN. SO ORDERED. Signed by Judge John D. Bates on 10/31/2022. (lcjdb2) (Entered: 10/31/2022)

10/31/2022	65	Proposed Jury Instructions by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 10/31/2022)
10/31/2022	66	Proposed Voir Dire by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 10/31/2022)
11/07/2022	67	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 11/07/2022)
11/07/2022		MINUTE ORDER: Upon consideration of 63 the government's unopposed motion in limine regarding evidence about the specific locations of U.S. Capitol police surveillance cameras, and the entire record herein, it is hereby ORDERED that the motion is GRANTED for the reasons stated in the hearing on this day. Signed by Judge John D. Bates on 11/7/2022. (lcjdb2) (Entered: 11/07/2022)
11/07/2022		MINUTE ORDER: It is hereby ORDERED that the parties shall file a trial brief, a witness list, and an exhibit list by not later than 4:00 p.m. on November 10, 2022; and it is further ORDERED that the government shall produce all Jencks material by not later than 4:00 p.m. on November 10, 2022. SO ORDERED. Signed by Judge John D. Bates on 11/7/2022. (lcjdb2) (Entered: 11/07/2022)
11/07/2022		Minute Entry: Pretrial Conference as to LARRY RENDALL BROCK held on 11/7/2022 before Judge John D. Bates: Parties discussed posture of case and trial. Oral motion by defendant to convert jury trial to a bench trial; heard and GRANTED. Bench Trial set for 11/14/2022 at 09:15 AM in Courtroom 30A- In Person before Judge John D. Bates. Defendant remains on release. Court Reporter: Lisa Moreira; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez, Douglas Meisel and Barry Disney. (tb) (Entered: 11/08/2022)
11/08/2022		Set/Reset Deadlines as to LARRY RENDALL BROCK: Brief due by 11/10/2022. Exhibit List due by 11/10/2022. Witness List due by 11/10/2022. (tb) (Entered: 11/08/2022)
11/08/2022		Set/Reset Hearings as to LARRY RENDALL BROCK:Status Conference reset for 11/21/2022 at 11:00 AM in Telephonic/VTC before Judge John D. Bates. (tb) (Entered: 11/08/2022)
11/10/2022	68	TRIAL BRIEF by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 11/10/2022)
11/10/2022	69	WITNESS LIST by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 11/10/2022)
11/10/2022	70	EXHIBIT LIST by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 11/10/2022)
11/10/2022	71	EXHIBIT LIST by LARRY RENDALL BROCK (Burnham, Charles) (Entered: 11/10/2022)
11/13/2022	72	EXHIBIT LIST by USA as to LARRY RENDALL BROCK (Ayers-Perez, April) (Entered: 11/13/2022)
11/13/2022	73	EXHIBIT LIST by LARRY RENDALL BROCK (Burnham, Charles) (Entered: 11/13/2022)
11/14/2022	74	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 11/14/2022)

11/14/2022		Minute Entry: Bench Trial begun as to LARRY RENDALL BROCK on 11/14/2022 before Judge John D. Bates: Opening statements; government witnesses: Sean Patton; Elizabeth Glavey; Nairobi Timberlake; Maggie May Humphrey and John Moore. Bench Trial continued to 11/15/2022 at 09:30 AM in Courtroom 30A- In Person before Judge John D. Bates. Defendant remains on release. Court Reporter: Jodie Hibbard; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez, Douglas Meisel and Barry Disney. (tb) (Entered: 11/14/2022)
11/14/2022	76	WAIVER of Trial by Jury as to LARRY RENDALL BROCK. Signed by Judge John D. Bates on 11/14/2022. (tb) (Entered: 11/15/2022)
11/15/2022	75	NOTICE OF ATTORNEY APPEARANCE Barry Kent Disney, I appearing for USA. (Disney, Barry) (Entered: 11/15/2022)
11/15/2022		Set/Reset Hearings as to LARRY RENDALL BROCK: Bench Trial (Judge's oral verdict) set for 11/16/2022 at 10:00 AM in Courtroom 30A- In Person before Judge John D. Bates. (tb) (Entered: 11/15/2022)
11/15/2022		Minute Entry: Bench Trial resumed as to LARRY RENDALL BROCK held on 11/15/2022 before Judge John D. Bates: Government witness: John Moore; government rested; Defendant's oral Rule 29 motion; heard and taken under advisement. Defendant rested. Closing arguments. Rulings and verdict shall be rendered on 11/16/2022 at 10:00 before Judge John D. Bates in Courtroom 30A. Defendant remains on release. Court Reporter: Jodie Hibbard; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez, Douglas Meisel and Barry Disney. (tb) (Entered: 11/16/2022)
11/16/2022		Minute Entry: Bench Trial concluded as to LARRY RENDALL BROCK on 11/16/2022 before Judge John D. Bates: The Court DENIES the defendant's oral Rule 29 motion. The Court rendered a verdict of GUILTY on all counts. Sentencing memoranda due by 2/7/2023. Sentencing set for 2/14/2023 at 10:30 AM in Courtroom 30A- In Person before Judge John D. Bates. REFERRAL TO PROBATION OFFICE for Presentence Investigation as to LARRY RENDALL BROCK. Court Reporter: Jodie Hibbard; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez, Douglas Meisel and Barry Disney. (tb) (Entered: 11/16/2022)
11/16/2022	77	ATTORNEYS' ACKNOWLEDGMENT OF TRIAL EXHIBITS as to LARRY RENDALL BROCK. (tb) (Entered: 11/16/2022)
11/16/2022	78	EXHIBIT LIST by USA as to LARRY RENDALL BROCK, (tb) (Entered: 11/21/2022)
12/06/2022	79	<p>TRANSCRIPT OF BENCH TRIAL - DAY 1 in case as to LARRY RENDALL BROCK before Judge John D. Bates held on November 14, 2022. Page Numbers: 1 - 221. Date of Issuance: December 6, 2022. Court Reporter: Jodi Hibbard. Telephone number: 315-234-8547. Transcripts may be ordered by submitting the Transcript Order Form</p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p>

		Redaction Request due 12/27/2022. Redacted Transcript Deadline set for 1/6/2023. Release of Transcript Restriction set for 3/6/2023.(Hook, Jeff) (Entered: 12/06/2022)
12/06/2022	80	<p>TRANSCRIPT OF BENCH TRIAL - DAY 2 in case as to LARRY RENDALL BROCK before Judge John D. Bates held on November 15, 2022. Page Numbers: 222 - 386. Date of Issuance: December 6, 2022. Court Reporter: Jodi Hibbard. Telephone number: 315-234-8547. Transcripts may be ordered by submitting the Transcript Order Form</p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 12/27/2022. Redacted Transcript Deadline set for 1/6/2023. Release of Transcript Restriction set for 3/6/2023.(Hook, Jeff) (Entered: 12/06/2022)</p>
12/06/2022	81	<p>TRANSCRIPT OF BENCH TRIAL - DAY 3 in case as to LARRY RENDALL BROCK before Judge John D. Bates held on November 16, 2022. Page Numbers: 387 - 417. Date of Issuance: December 6, 2022. Court Reporter: Jodi Hibbard. Telephone number: 315-234-8547. Transcripts may be ordered by submitting the Transcript Order Form</p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 12/27/2022. Redacted Transcript Deadline set for 1/6/2023. Release of Transcript Restriction set for 3/6/2023.(Hook, Jeff) (Entered: 12/06/2022)</p>
01/17/2023	82	DRAFT PRESENTENCE INVESTIGATION REPORT (prepared by USPO Kelli Willett) as to LARRY RENDALL BROCK(Kraemer-Soares, Kelly) (Entered: 01/17/2023)
02/06/2023	84	FINAL PRESENTENCE INVESTIGATION REPORT (prepared by USPO Kelli Willett) as to LARRY RENDALL BROCK(Kraemer-Soares, Kelly) (Entered: 02/06/2023)
02/06/2023	85	RECOMMENDATION of FINAL PRESENTENCE INVESTIGATION REPORT (prepared by USPO Kelli Willett) as to LARRY RENDALL BROCK(Kraemer-Soares, Kelly) (Entered: 02/06/2023)
02/06/2023	86	MOTION to Continue <i>Sentencing</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 02/06/2023)

02/07/2023		MINUTE ORDER: Upon consideration of 86 defendant's unopposed motion to continue sentencing, and the entire record herein, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that sentencing is RESCHEDULED to March 17, 2023 at 11:00 a.m. in Courtroom 30A; and it is further ORDERED that sentencing memoranda are to be filed by not later than the end of the business day on March 10, 2023. SO ORDERED. Signed by Judge John D. Bates on 2/7/2023. (lcjdb2) (Entered: 02/07/2023)
02/14/2023		Set/Reset Hearings as to LARRY RENDALL BROCK: Sentencing reset for 3/17/2023 at 11:00 AM in Courtroom 30A- In Person before Judge John D. Bates. (tb) (Entered: 02/14/2023)
03/10/2023	87	MOTION to Continue <i>Sentencing</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 03/10/2023)
03/10/2023	88	SENTENCING MEMORANDUM by USA as to LARRY RENDALL BROCK (Attachments: # 1 Appendix)(Ayers-Perez, April) (Entered: 03/10/2023)
03/11/2023	90	STRICKEN FROM THE RECORD PURSUANT TO MINUTE ORDER FILED ON 03/16/2023.....SENTENCING MEMORANDUM by LARRY RENDALL BROCK (Attachments: # 1 Exhibit letters, # 2 Exhibit chart)(Burnham, Charles) Modified on 3/17/2023 (tb). (Entered: 03/11/2023)
03/12/2023		MINUTE ORDER: Upon consideration of 87 defendant's motion to continue sentencing, and the entire record herein, it is hereby ORDERED that the government shall file a response stating its position by not later than March 13, 2023. Signed by Judge John D. Bates on 3/12/2023. (lcjdb2) (Entered: 03/12/2023)
03/12/2023		MINUTE ORDER: Upon consideration of 89 defendant's motion for leave to file his sentencing memorandum under seal, and the entire record herein, it is hereby ORDERED that the motion is DENIED; and it is further ORDERED that defendant shall file a public version of his sentencing memorandum redacting only the addresses and phone numbers of those who wrote letters on his behalf by not later than March 13, 2023. SO ORDERED. Signed by Judge John D. Bates on 3/12/2023. (lcjdb2) (Entered: 03/12/2023)
03/13/2023	91	MOTION for Reconsideration <i>On Order Regarding Redactions or in the Alternative for One Day Extension to File Revised Sentencing Materials</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 03/13/2023)
03/13/2023		MINUTE ORDER: Upon consideration of 91 defendant's motion to reconsider the Court's March 12, 2023 Order denying his motion for leave to file under seal his sentencing memorandum, and the entire record herein, it is hereby ORDERED that the motion is DENIED; and it is further ORDERED that defendant shall file a public version of his sentencing memorandum redacting only the addresses and phone numbers of those who wrote letters of support on his behalf by not later than March 15, 2023. SO ORDERED. Signed by Judge John D. Bates on 3/13/2023. (lcjdb2) (Entered: 03/13/2023)
03/13/2023	92	RESPONSE by USA as to LARRY RENDALL BROCK re 87 MOTION to Continue <i>Sentencing</i> (Ayers-Perez, April) (Entered: 03/13/2023)
03/14/2023		MINUTE ORDER: Upon consideration of 87 defendant's motion to continue sentencing, and the entire record herein, it is hereby ORDERED that the motion is DENIED. Signed by Judge John D. Bates on 3/14/2023. (lcjdb2) (Entered: 03/14/2023)
03/15/2023		Set/Reset Deadlines as to LARRY RENDALL BROCK: Response due by 3/13/2023. (tb) (Entered: 03/15/2023)

03/15/2023	93	REPLY by LARRY RENDALL BROCK re 88 Sentencing Memorandum. (Burnham, Charles) Modified Text on 3/17/2023 (zhsj). (Entered: 03/15/2023)
03/15/2023	94	MOTION for Permission to Withdraw Perviously Filed Sentencing Memorandum and Substitute Amended Sentencing Memorandum by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit Amended Sentencing Memo) (Burnham, Charles) Modified Event on 3/16/2023 (zhsj). (Entered: 03/15/2023)
03/16/2023	95	PRETRIAL COMPLIANCE REPORT as to LARRY RENDALL BROCK. This document is for informational purposes only. No action is requested.(Copes, John) (Entered: 03/16/2023)
03/16/2023		MINUTE ORDER: Upon consideration of 94 defendant's motion to withdraw 90 his previously filed sentencing memorandum and replace it with [94-1], [94-2], and [94-3], and the entire record herein, it is hereby ORDERED that the motion is GRANTED; it is further ORDERED that 90 shall be STRICKEN from the docket; and it is further ORDERED that [94-1], [94-2], and [94-3] are deemed filed as defendant's sentencing memorandum and part of the record. SO ORDERED. Signed by Judge John D. Bates on 3/16/2023. (lcjdb2) (Entered: 03/16/2023)
03/16/2023	96	AMENDED SENTENCING MEMORANDUM by LARRY RENDALL BROCK (Attachments: # 1 Exhibit 1 Letter, # 2 Exhibit 2 Portland Federal Courthouse Cases) (zhsj) (Entered: 03/20/2023)
03/17/2023		Minute Entry: Sentencing held on 3/17/2023 as to LARRY RENDALL BROCK (1) held before Judge John D. Bates all counts of the Superseding Indictment:Count(s) 1s: Defendant sentenced to TWENTY-FOUR (24) months on Count 1s to run concurrently with Counts 2s, 3s, 4s, 5s and 6s. No period of supervised release imposed. Special Assesment of \$10.00; Count(s) 2s: Defendant sentenced to TWELVE (12) months on Count 2s to run concurrently with Counts 1s, 3s, 4s, 5s and 6s. TWELVE (12) months of Supervised to run concurrently with Counts 1s and 3s. Special Assesment of \$25.00; Count(s) 3s: Defendant sentenced to TWELVE (12) months on Count 3s to run concurrently with Counts 1s, 2s, 4s, 5s and 6s. TWELVE (12) months of Supervised to run concurrently with Counts 1s and 2s. Special Assesment of \$25.00; Count(s) 4s: Defendant sentenced to SIX (6) months on Count 4s to run concurrently with Counts 1s, 2s, 3s, 5s and 6s. No period of supervised release imposed. Special Assesment of \$10.00; Count(s) 5s: Defendant sentenced to SIX (6) months on Count 5s to run concurrently with Counts 1s, 2s, 3s, 4s and 6s. No period of supervised release imposed. Special Assesment of \$10.00.; Count(s) 6, Oral motion by government to dismiss count; heard and GRANTED; Count(s) 6s: Defendant sentenced to SIX (6) months on Count 4s to run concurrently with Counts 1s, 2s, 3s, 4s, 5s. No period of supervised release imposed. Special Assesment of \$10.00. Defendant remains on release. Court Reporter: Elizabeth Saint Loth; Defense Attorney: Charles Burnham; US Attorney: April Ayers-Perez and Douglas Meisel; Probation: Kelli Willett. (tb) Modified on 4/20/2023 (tb). (Entered: 03/21/2023)
03/17/2023	97	Parties Obligation and Response to Presentence Report by LARRY RENDALL BROCK. (tb) (Entered: 03/21/2023)
03/20/2023	98	JUDGMENT as to LARRY RENDALL BROCK. Statement of Reasons Not Included. Signed by Judge John D. Bates on 3/20/2023. (zhsj) (Entered: 03/22/2023)
03/20/2023	99	STATEMENT OF REASONS as to LARRY RENDALL BROCK re 98 Judgment Access to the PDF Document is restricted per Judicial Conference Policy. Access is limited to Counsel of Record and the Court. Signed by Judge John D. Bates on 3/20/2023. (zhsj) (Entered: 03/22/2023)

03/28/2023	100	NOTICE OF APPEAL - Final Judgment by LARRY RENDALL BROCK Filing fee \$ 505, receipt number ADCDC-9958298. Fee Status: Fee Paid. Parties have been notified. (Burnham, Charles) (Entered: 03/28/2023)
03/28/2023	101	MOTION for Bond / <i>Release Pending Appeal</i> by LARRY RENDALL BROCK. (Attachments: # 1 Exhibit Chart of Sentences)(Burnham, Charles) (Entered: 03/28/2023)
03/30/2023	102	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid as to LARRY RENDALL BROCK re 100 Notice of Appeal - Final Judgment. (ztnr) (Entered: 03/30/2023)
03/30/2023	103	ENTERED IN ERROR.....Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid on 3/17/2023. Sentencing on 3/17/2023 as to LARRY RENDALL BROCK re 100 Notice of Appeal - Final Judgment. (zhsj) Modified on 3/30/2023 (zhsj). (Entered: 03/30/2023)
03/30/2023		NOTICE OF ERROR as to LARRY RENDALL BROCK regarding 103 Transmission of Notice of Appeal and Docket Sheet to USCA as a Duplicate. (zhsj) (Entered: 03/30/2023)
04/13/2023	104	MOTION Treat Motion for Release Pending Appeal As Conceded <i>and Supplement to Original Motion</i> by LARRY RENDALL BROCK. (Burnham, Charles) (Entered: 04/13/2023)
04/13/2023	105	RESPONSE by USA as to LARRY RENDALL BROCK re 104 MOTION Treat Motion for Release Pending Appeal As Conceded <i>and Supplement to Original Motion</i> , 101 MOTION for Bond / <i>Release Pending Appeal</i> (Attachments: # 1 Motion for Leave)(Ayers-Perez, April) (Entered: 04/13/2023)
04/14/2023		MINUTE ORDER: Upon consideration of 104 defendant's motion to treat 101 his motion for release pending appeal as uncontested, and the entire record herein, is it hereby ORDERED that the motion is denied, and the Court will accordingly consider 105 the government's opposition in resolving the motion; and it is further ORDERED that defendant shall file any reply in support of 101 his motion for release pending appeal by not later than the close of business on April 17, 2023. SO ORDERED. Signed by Judge John D. Bates on 4/14/2023. (lcjdb2) (Entered: 04/14/2023)
04/14/2023		Set/Reset Deadlines as to LARRY RENDALL BROCK: Reply due by 4/17/2023. (tb) (Entered: 04/14/2023)
04/17/2023	106	REPLY TO OPPOSITION to Motion by LARRY RENDALL BROCK re 101 MOTION for Bond / <i>Release Pending Appeal</i> (Burnham, Charles) (Entered: 04/17/2023)
04/20/2023	107	ORDER denying 101 defendant's motion for release pending appeal. See text of Order for details. Signed by Judge John D. Bates on 4/20/2023. (lcjdb2) (Entered: 04/20/2023)
04/21/2023	108	MOTION Extend BOP Surrender Date by LARRY RENDALL BROCK. (Attachments: # 1 Text of Proposed Order)(Burnham, Charles) (Entered: 04/21/2023)
04/21/2023	109	RESPONSE by USA as to LARRY RENDALL BROCK re 108 MOTION Extend BOP Surrender Date (Ayers-Perez, April) (Entered: 04/21/2023)
04/21/2023	110	ORDER granting 108 defendant's motion to extend self-reporting date. See text of Order for details. Signed by Judge John D. Bates on 4/21/2023. (lcjdb2) (Entered: 04/21/2023)
04/24/2023	111	Transmitted Supplemental Record on Appeal and Docket Sheet to USCA Order Denying Defendant's Motion for Release Pending Appeal as to LARRY RENDALL BROCK re 100 Notice of Appeal - Final Judgment. (zhsj) (Entered: 04/24/2023)
05/09/2023		USCA Case Number as to LARRY RENDALL BROCK 23-3045 for 100 Notice of Appeal - Final Judgment filed by LARRY RENDALL BROCK. (zhsj) (Entered: 05/09/2023)

		05/09/2023)
06/30/2023	112	<p>TRANSCRIPT OF PROCEEDINGS, in case as to LARRY RENDALL BROCK, before Judge John D. Bates, held on 3-17-2023. Page Numbers: 1 - 99. Date of Issuance: 6-30-2023. Court Reporter: Elizabeth Saint-Loth, Telephone number: 202-354-3242. Transcripts may be ordered by submitting the Transcript Order Form</p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 7/21/2023. Redacted Transcript Deadline set for 7/31/2023. Release of Transcript Restriction set for 9/28/2023.(Saint-Loth, Elizabeth) (Entered: 06/30/2023)</p>

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 8, 2021

RECEIVED

JUN 23 2021

Clark, U.S. District and
Bankruptcy Courts

UNITED STATES OF AMERICA	:	CRIMINAL NO. 21-CR-140 (JDB)
	:	
v.	:	
	:	
LARRY BROCK,	:	VIOLATIONS:
	:	18 U.S.C. §§ 1512(c)(2), 2
Defendant.	:	(Obstruction of an Official Proceeding)
	:	18 U.S.C. § 1752(a)(1)
	:	(Entering and Remaining in a Restricted
	:	Building or Grounds)
	:	18 U.S.C. § 1752(a)(2)
	:	(Disorderly and Disruptive Conduct in a
	:	Restricted Building or Grounds)
	:	40 U.S.C. § 5104(e)(2)(A)
	:	(Entering and Remaining on the Floor of
	:	Congress)
	:	40 U.S.C. § 5104(e)(2)(D)
	:	(Disorderly Conduct in a Capitol
	:	Building)
	:	40 U.S.C. § 5104(e)(2)(G)
	:	(Parading, Demonstrating, or Picketing in
	:	a Capitol Building)

INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about January 6, 2021, within the District of Columbia and elsewhere, **LARRY BROCK**, attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress's certification of the Electoral College

vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

(Obstruction of an Official Proceeding and Aiding and Abetting, in violation of Title 18, United States Code, Sections 1512(c)(2) and 2)

COUNT TWO

On or about January 6, 2021, within the District of Columbia, **LARRY BROCK**, did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, without lawful authority to do so.

(Entering and Remaining in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(1))

COUNT THREE

On or about January 6, 2021, within the District of Columbia, **LARRY BROCK**, did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions.

(Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(2))

COUNT FOUR

On or about January 6, 2021, within the District of Columbia, **LARRY BROCK**, willfully and knowingly entered and remained on the floor of a House of Congress without authorization to do so.

(Entering and Remaining on the Floor of Congress, in violation of Title 40, United States Code, Section 5104(e)(2)(A))

COUNT FIVE

On or about January 6, 2021, within the District of Columbia, **LARRY BROCK**, willfully and knowingly engaged in disorderly and disruptive conduct within the United States Capitol Grounds and in any of the Capitol Buildings with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress and either House of Congress, and the orderly conduct in that building of a hearing before or any deliberation of, a committee of Congress or either House of Congress.

(Disorderly Conduct in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(D))

COUNT SIX

On or about January 6, 2021, within the District of Columbia, **LARRY BROCK**, willfully and knowingly paraded, demonstrated, and picketed in any United States Capitol Building.

(Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G))

A TRUE BILL:

FOREPERSON.



Attorney of the United States in
and for the District of Columbia.

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

United States)	
)	
v.)	NO. 1:21cr140
)	
Larry Brock)	
)	
)	
<u>Defendant.</u>)	

**MOTION TO DISMISS COUNT I OR IN THE ALTERNATIVE FOR A BILL OF
PARTICULARS**

BACKGROUND

Mr. Brock is charged in a six count indictment with Obstruction of an Official Proceeding (18 U.S.C. § 1512), Entering and Remaining in a Restricted Building or grounds (18 U.S.C. § 1752), Disorderly and Disruptive Conduct in a Restricted Building or Grounds, (18 U.S.C. § 1752), Entering and Remaining on the Floor of Congress, (40 5104(e)(2)(A)), Disorderly Conduct in a Capitol Building (40 U.S.C. § 5104(e)(2)(D)), and Parading, Demonstrating or Picketing in a Capitol Building (40 U.S.C. § 5104(e)(2)(G)).

Mr. Brock traveled to Washington, D.C. to participate in the permitted First Amendment demonstration that took place on January 6. Based on government discovery productions, there is no allegation that Mr. Brock forcibly entered the capitol or engaged in property destruction or violence. All video footage shows him behaving in a peaceable manner.

ARGUMENT

I. Count I Should be Dismissed Because § 1512(c) Only Applies to Documents, Records and Other Objects

In *United States v Miller*, Judge Nichols dismissed a § 1512(c) count in a January 6 case, holding that the statute only applied to obstruction with regard to documents, records, and other objections. 2022 WL 823070 (D.D.C. March 7, 2022). Mr. Brock is aware that this Court reached a different conclusion in *United States v. McHugh*, 21cr453 (D.D.C. May 2, 2022) ECF 64. Mr. Brock respectfully disagrees with the Court's conclusion in *McHugh* and submits that Count I should be dismissed for the reasons offered in *Miller*.

II. § 1512(c) Does Not Apply to the Conduct Alleged Against Mr. Brock

A defendant in a criminal case may move to dismiss the indictment against him on the ground that the it does not apply to the charged conduct. *United States v. Montgomery*, 2021 WL 6134591, at *1 (D.D.C., Dec 28, 2021). Here, § 1512(c)(2) criminalizes “obstruct[ing], influenc[ing], or impeding any official proceed[ing], or attempt[ing] to do so.”

The official proceeding in question here is “Congress’s certification of the Electoral College vote.” The indictment does not allege which acts by Mr. Brock constituted attempts to obstruct this proceeding. Based on discovery productions, it does not appear that the government is going to allege that Mr. Brock entered the United States Capitol until after this proceeding had adjourned. The government is not expected to allege that any of his actions were the cause of the proceeding’s adjournment. It would therefore appear that Count I “does not apply to the charged conduct.”

To be sure, a district court considering a defense motion to dismiss does not

typically “review the sufficiency of the evidence.” *United States v. McHugh*, 2022 WL 296304, at *3 (D.D.C.). However, where particular facts essential to the motion are not disputed, there would seem to be no obstacle to deciding the matter at the pretrial stage. Unless the government can proffer some act by Mr. Brock which, if proven, would constitute an attempt to obstruct the joint session, Count I should be dismissed.

III. In the Alternative, this Court Should Order the Government to Provide a Bill of Particulars Specifying How Mr. Brock is Alleged to Have Obstructed the Joint Session

If this Court is not prepared to dismiss Count I at this stage, the proper alternative is to order the government to provide a Bill of Particulars. Under Rule 7(f), “a bill of particulars can be used to ensure that the charges brought against a defendant are stated with enough precision to allow the defendant to understand the charges [and] to prepare a defense.” *United States v. Concord Mgmt. & Consulting LLC*, 385 F.Supp. 3d 69, 73 (D.D.C. 2019).

This standard is met here. Mr. Brock is differently situated from those January 6 defendants accused of having struggled with police or broken windows to gain access to the Capitol grounds. The evidence will show that he did not arrive on the scene until well after police began allowing people to enter the Capitol, and the Congressmen and Senators had departed. The indictment makes no allegations as to which of his actions could have been obstructive of a proceeding that had already adjourned. A bill of particulars is therefore necessary to allow him to prepare his defense.

CONCLUSION

For the foregoing reasons, the defendant asks this Court dismiss Count I or in the alternative to order the government to provide a Bill of Particulars.

Respectfully Submitted,

By:

/s/ Charles Burnham
Charles Burnham VSB # 72781
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CERTIFICATE OF SERVICE

I have served this filing on the government through the ecf system.

Respectfully Submitted,

By: /s/ Charles Burnham
Charles Burnham VSB # 72781
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL NO. 21-CR-140 (JDB)
v.	:	
	:	
LARRY BROCK,	:	
	:	
Defendant.	:	

**OPPOSITION TO DEFENDANT’S MOTION TO DISMISS COUNT 1:
OBSTRUCTION OF AN OFFICIAL PROCEEDING**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby respectfully submits this opposition to the defendant’s motion to dismiss Count One: Obstruction of an Official Proceeding. The Defendant’s motion should be denied because 18 U.S.C. § 1512(c)(2) applies to non-evidentiary obstruction, it applies to Brock’s alleged conduct, and a bill of particulars is unwarranted.

PROCEDURAL POSTURE

Defendant, Larry Brock, is charged with one count in violation of 18 U.S.C. § 1512(c)(2), 2 (Obstruction of an Official Proceeding) (Count One); one count in violation of 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds) (Count Two); one count in violation of 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds) (Count Three); one count in violation of 40 U.S.C. § 5104(e)(2)(A) (Entering and Remaining on the Floor of Congress) (Count Four); one count in violation of 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building) (Count Five); and one count in violation of 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building) (Count Six). On July 1, 2022, Defendant filed a motion to dismiss Count I of the

superseding indictment which charges him with violating 18 U.S.C. § 1512(c)(2) (Obstruction of an Official Proceeding). *See* Def.’s Mot. To Dismiss, 1-3.

LEGAL STANDARD

Federal Rule of Criminal Procedure 12(b)(3)(B)(v)

Under Fed. R. Crim. P. 12(b)(3)(B)(v), defendants may move to dismiss an indictment for “failure to state an offense.” An indictment may fail to state an offense if the statutory provision at issue does not apply to the charged conduct. *McHugh*, 2022 WL 1302880, at 2* (citing *Montgomery*, 2021 WL 6134591, at 1*). However, because dismissal encroaches on the grand jury’s role, courts must only dismiss indictments under unusual circumstances. *U.S. v. Ballestas*, 795 F.3d 138, 148-49 (D.C. Cir. 2015) (citing *Whitehouse v. U.S. Dist. Court*, 53 F.3d 1349, 1360 (1st Cir. 1995) (internal citations omitted)). When considering a motion to dismiss, courts must assume that all factual allegations in the indictment are true and ask whether those allegations, if true, would be legally sufficient to allow a jury to find that the defendant committed the charged crimes. *U.S. v. Bowdoin*, 770 F. Supp.2d 142, 146 (D.D.C. 2011) (citing *U.S. v. Sampson*, 371 U.S. 75, 76 (1962)); *McHugh*, 2022 WL 1302880, at 3*.

Federal Rule of Criminal Procedure 7(f)

Federal Rule of Criminal Procedure 7(f) says that a court may direct the government to file a bill of particulars. Fed. R. Crim. P. 7(f). “The determination of whether a bill of particulars is necessary ‘rests within the sound discretion of the trial court.’” *U.S. v. Mejia*, 448 F.3d 436, 445 (D.C. Cir. 2006) (quoting *U.S. v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987)). Defendants are not entitled to a bill of particulars, but courts should grant it upon finding it *necessary*. *U.S. v. Mosquera-Murillo*, 153 F. Supp 130, 146 (D.D.C. 2015) (citing Charles Alan Wright & Andrew Leipold, *Federal Practice and Procedure: Criminal* § 130 (4th ed. 2008)). A bill of particulars is

not required when the indictment is sufficiently specific, or the requested information is available in some other form. *Butler*, 822 F.2d at 1193. A bill of particulars cannot be used as a discovery tool or tactic for previewing the government's case. *U.S. v. Sutton*, No. 21-0598, 2022 WL 1183797, at 2* (D.D.C. Apr. 21, 2022) (citing *Mejia*, 448 F.3d at 445 and *U.S. v. Sarford Ltd.*, 841 F. Supp. 2d 309, 316 (D.D.C. 2012)). Instead, it is solely designed to help defendants understand the charges against them and prepare defenses. *Id.*

ARGUMENT

I. Count I should not be dismissed because § 1512(c)(2) applies to any conduct which obstructs, influences, or impedes an official proceeding.

Although Defendant's motion to dismiss characterizes his narrow interpretation of § 1512(c)(2) as one of two opposing views in this district, this characterization is quite misleading. In fact, Defendant's position goes against the heavy weight of authority on the issue in this district.¹ As this Court has already done, it should reject Defendant's crabbed interpretation of § 1512(c)(2) and deny his motion to dismiss.

Plain text

The text of the § 1512(c) provides that:

(c) Whoever corruptly-

¹ Compare *U.S. v. Caldwell*, No. 21-cr-28, 2021 WL 6062718, at 11* (D.D.C. Dec. 20, 2021) (Mehta, J.), and *U.S. v. Sandlin*, No. 21-cr-88, 2021 WL 5865006, at 5* (D.D.C. Dec. 10, 2021) (Friedrich, J.), and *U.S. v. Robertson*, No. 21-cr-34, 2022 WL 2438546, at 3* (D.D.C. July 5, 2022) (Cooper, J.), and *U.S. v. Mostcfsky*, No. 21-138, 2021 WL 6049891, at 11* (D.D.C. Dec. 21, 2021) (Boasberg, J.), and *U.S. v. Montgomery*, No. 21-46, 2021 WL 6134591, at 10* (D.D.C. Dec. 28, 2021) (Moss, J.), and *U.S. v. Nordean*, No. 21-175, 2021 WL 6134595, at 6* (D.D.C. Dec. 28, 2021) (Kelly, J.), and *U.S. v. Grider*, No. 21-0022, 2022 WL 392307, at 5* (D.D.C. Feb. 9, 2022) (Kollar-Kotelly, J.), and *U.S. v. McHugh*, No. 21-453, 2022 WL 1302880, at 2* (D.D.C. May 2, 2022) (Bates, J.), and *U.S. v. Bingert*, No. 1:21-cr-91-RCL, 2022 WL 1659163, at 7* (D.D.C. May 25, 2022) (Lamberth, J.), and *U.S. v. Fitzsimons*, No. 21-158, 2022 WL 1698063, at 6* (D.D.C. May 26, 2022) (Contreras, J.), with *U.S. v. Miller*, No. 1:21-cr-00119, 2022 WL 823070, at 6* (D.D.C. Mar. 7, 2022) (Nichols, J.), *appeal docketed*, No. 22-3041 (D.C. Cir. June 28, 2022).

- 1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; *or*
 - 2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,
- shall be fined under this title or imprisoned not more than 20 years, or both

18 U.S.C. § 1512(c). As this Court has noted, a plain reading of the statute indicates that conduct that obstructs, influences, or impedes an official proceeding *in a different way* than the conduct enumerated in § 1512(c)(1) is covered by (c)(2). *McHugh*, 2022 WL 1302880, at 3* (citing Oxford English Dictionary (3d ed. 2004)). Section 1512(c)(2) therefore covers conduct aimed at the proceeding itself, without limitation to conduct listed in (c)(1), comes from the use of the verbs “obstructs,” “influences,” and “impedes.” *See Montgomery*, 2021 WL 6134591, at 14* (“[T]he Court might ask here: How anyone could . . . “obstruct[], influence[], or impede[]” “a record, document, or other object””).

Defendant’s reliance on *Miller* for a contrary conclusion is unpersuasive. The ejusdem generis canon of construction, which underlies the *Miller* decision, is inapt for § 1512(c) because it applies only to enumerations that end in a generic term. *McHugh*, 2022 WL 1302880, at 3* (citing *Overdevest Nurseries, L.P. v. Walsh*, 2 F.4th 977, 983 (D.C. Cir. 2021)). In contrast to ejusdem generis-appropriate enumerations, § 1512(c) has two separate paragraphs with a semicolon separating “otherwise” from (c)(1) and with distinct sets of verbs and direct objects. *Id.* at 4*; *Caldwell*, 2021 WL 6062718, at 18*; *Mostofsky*, 2021 WL 6049891, at 11*.

Miller’s reliance on *Begay v. United States*, 553 U.S. 137 (2007), in its reasoning is similarly misplaced for two main reasons. First, § 1512(c) is readily distinguishable from § 924(e)(2)(b)(ii), the statute at issue in *Begay*. Unlike in § 924(e)(2)(b)(ii), the “otherwise” in § 1512(c) is set off by a semicolon and a line break, and the provision is quite grammatically

distinct. 18 U.S.C. § 924(e)(2)(b)(ii); § 1512(c); *see McHugh*, 2022 WL 1302880, at 4* (citing *Caldwell* 2021 WL 6062718, at 14*); *Montgomery*, 2021 WL 6134591, at 12* (noting that the two provisions in § 1512 do not overlap in the same way they do in § 924(e)(2)(b)(ii) because (c)(2) directly aims at the official proceeding and (c)(1) indirectly aims at it). Second, *Begay* is not dispositive of the word “otherwise” since the issue in the case did not turn on its meaning. *See Bingert*, 2022 WL 1659163, at 8* (“No Justices contend that the term “otherwise,” on its own, somehow limits the scope of a statute so that the antecedent clause is limited by what precedes ‘otherwise’”); *see also Begay*, 553 U.S. at 144 (“[T]he word ‘otherwise’ can (we do not say must) refer to a crime that is similar to the listed examples in some respects but different in others”).

As this Court has noted, a more comprehensive interpretation of § 1512(c) gives effect to the word “otherwise” in a way that the interpretation advanced in *Miller* does not. *McHugh*, 2022 WL 1302880, at 5-6.* If Congress wanted to limit the statute to physical evidence integrity, there would have been no need to include language about *otherwise* obstructing, influencing, or impeding the official proceeding *itself*. *See Montgomery*, 2021 WL 6134591, at 12* (pointing out that Congress could have used “engages in conduct that otherwise impairs the integrity or availability of evidence or testimony for use in an official proceeding” if it wanted to have a catch-all provision limited only to evidence-related conduct). As this Court pointed out, statutes similar to § 1512(c), like 28 U.S.C. § 2466(a) and 18 U.S.C. § 1952(a), have been interpreted as using “otherwise” as a catch-all to capture conduct not specifically enumerated, but plainly envisioned, and this is, in fact, the whole point of a catch-all. *See McHugh*, 2022 WL 1302880, at 5* (*citing Collazos v. U.S.*, 368 F.3d 190, 200 (2d Cir. 2004)).

For all the reasons explained above, the plain text of § 1512(c) indicates that (c)(2) is not limited by the language of (c)(1) to documents, records, and other objects, but instead covers any conduct which obstructs, influences, or impedes the official proceeding itself.²

Context and Purpose

In addition to its plain text, § 1512(c)(2)'s context and purpose also militate against dismissal. The statutory context and overlap with other statutes in § 1512 do not provide evidence of an intent to narrow the scope of § 1512(c)(2), as *Miller* suggests. Overlap like the kind in § 1512 is both common in criminal law and not the kind of overlap that the canon against surplusage disfavors. *See McHugh*, 2022 WL 1302880, at 7* (“Congress may, and often does, enact separate criminal statutes that may, in practice, cover some of the same conduct” (quoting *Hubbard v. U.S.*, 514 U.S. 695, 714 n.14 (1995))); *Sandlin*, 2021 WL 5865006, at 8* (stating that the canon against surplusage does not favor “substituting of one instance of superfluous language for another” (quoting *United States v. Ali*, 718 F.3d 929, 938 (D.C. Cir. 2013))). As this Court observed, even *Miller*'s narrow interpretation of § 1512(c)(2) would overlap with seven other § 1512 provisions, undercutting the argument that the canon against surplusage in any way favors Defendant's interpretation. *McHugh*, 2022 WL 1302880, at 7*.

Defendant also draws support from § 1512's historical development and legislative history. As an initial matter, “neither sheds much light” on Section 1512(c)(2)'s scope. *Rejifitt*, 2022 WL 1404247, at *9. What illumination historical context and legislative history does offer favors the view that Section 1512(c)(2) “creates direct liability for an individual's obstructive acts beyond those relating to physical evidence.” *Id.* For example, the relevant verbs in Section

² Even if this Court found that § 1512(c) should be limited to obstructing evidentiary material, the statute would still cover Defendant's conduct, as he was found on the Senate floor rifling through Senator's paperwork.

1512(c)(2)—“obstruct[],” “influence[],” and “impede[]”—were “likely adapted” from the “expansive prohibitions” on obstruction found in 18 U.S.C. § 1503(a) and 18 U.S.C. § 1505. *See McHugh*, 2022 WL 1302880, at *10. That “broader reading,” moreover, finds support in floor statements of the lawmakers that enacted Section 1512(c)(2). *See id.* at *12. And to the extent Congress’s enactment of Section 1512(a)(2)(B) just three months after the enactment of Section 1512(c) might tend to undermine the plain-language interpretation of Section 1512(c)(2), *see* Opp. 20-21, the fact that Section 1512(a)(2) was “written and first approved” a year earlier than it was enacted—and therefore nine months before Section 1512(c)(2) was enacted—“somewhat undermines the inference” based on Section 1512(a)(2) that *Miller* drew about Section 1512(c)(2)’s scope. *McHugh*, 2022 WL 1302880, at *9 n.17.

Finally, as this Court correctly pointed out, if Congress wanted to draft the narrow catch-all provision that Defendant insists on, it knew perfectly well how to do so. *See McHugh*, 2022 WL 1302880, at 10* (“Whoever . . . willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material . . . [s]hall be fined under this title . . .” (quoting 18 U.S.C. § 1505)). The fact that instead of using language like § 1505, Congress chose to use expansive language demonstrates that it intended to capture broadly obstructive conduct aimed at the proceedings themselves. *See Sandlin*, 2021 WL 5865006, at 5* (referring to the terms of § 1512(c)(2) as “expansive”). This Court should give full effect to Congress’s clear intent by broadly construing § 1512(c)(2) based on the broad language Congress intentionally chose to put in it.

Nothing in § 1512(c)(2)’s context, purpose, or history warrants a departure from the plain breadth of its text. The language of § 1512 (c)(2) unambiguously covers conduct that obstructs official proceedings in a way that is different from, and not limited by (c)(1)’s prohibition of

obstructive behavior concerning documents, records, and other objects. Because the statute is clear, there is no need to resort to the rule of lenity to resolve the issue. Therefore, Count I should not be dismissed because it applies to conduct aimed at the official proceeding itself, not simply documents, records, and other objects.

II. § 1512(c) squarely applies to Brock’s alleged conduct on January 6, 2021.

The facts contained in the Superseding Indictment, if proven, are sufficient to allow a jury to find that Defendant committed Obstruction of an Official Proceeding under § 1512(c)(2). Specifically, the Superseding Indictment alleges that Defendant “attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.” *See* Superseding Indictment, 1-2.

Rule 12 permits a party to raise in a pretrial motion “any defense, objection, or request that the court can determine *without a trial on the merits*.” Fed. R. Crim. P. 12(b)(1) (emphasis added). It follows that Rule 12 “does not explicitly authorize the pretrial dismissal of an indictment on sufficiency-of-the-evidence grounds” unless the government “has made a *full* proffer of evidence” or the parties have agreed to a “stipulated record,” *United States v. Yakou*, 428 F.3d 241, 246-47 (D.C. Cir. 2005) (emphasis added)—neither of which has occurred here. Indeed, “[i]f contested facts surrounding the commission of the offense would be of *any* assistance in determining the validity of the motion, Rule 12 doesn’t authorize its disposition before trial.” *United States v. Pope*, 613 F.3d 1255, 1259 (10th Cir. 2010) (Gorsuch, J.). Criminal cases have no mechanism equivalent to the civil rule for summary judgment. *United States v. Bailey*, 444 U.S. 394, 413, n.9 (1980) (motions for summary judgment are creatures of

civil, not criminal trials); *Yakou*, 428 F.2d at 246-47 (“There is no federal criminal procedural mechanism that resembles a motion for summary judgment in the civil context”); *United States v. Oseguera Gonzalez*, No. 20-cr-40-BAH at *5, 2020 WL 6342940 (D.D.C. Oct. 29, 2020) (collecting cases explaining that there is no summary judgment procedure in criminal cases or one that permits pretrial determination of the sufficiency of the evidence). Accordingly, dismissal of a charge does not depend on forecasts of what the government can prove. Instead, a criminal defendant may move for dismissal based on a defect in the indictment, such as a failure to state an offense. *United States v. Knowles*, 197 F. Supp. 3d 143, 148 (D.D.C. 2016). Whether an indictment fails to state an offense because an essential element is absent calls for a legal determination.

Under these principles, Defendant’s speculation that the proof will fail to establish that he caused the Certification proceeding to adjourn is premature. In any event, whether Defendant entered the Capitol before the proceeding adjourned is immaterial to the charges against him. A violation of § 1512(c)(2) requires showing that a defendant corruptly obstructed, influenced, or impeded an official proceeding. It depends in no way on Defendant’s precise geographical location at some particular time.

III. Defendant’s motion for a Bill of Particulars should be denied.

Although Defendant’s motion to dismiss claims not to have enough information to prepare a defense, it simultaneously references the very conduct which obstructed the official proceeding. Brock Mot. To Dismiss, 3. The superseding indictment and evidence produced in discovery make abundantly clear what conduct Defendant engaged in, which obstructed the proceeding. Defendant forcefully entered the Capitol as part of a mob during Congress’s certification of the Electoral College vote. He entered the Senate chamber where the proceeding

had been taking place and appeared to exit from the office of the Speaker of the House. It is irrelevant that he entered after the proceeding had adjourned because the very reason it adjourned was the threat of the collective mob that Defendant was a part of. Defendant cannot extricate himself from the collective threat the mob posed to members of Congress and the Vice President, which was precisely the threat that caused the proceeding to halt. Because it is clear from the evidence produced by the government and the Indictment what conduct forms the basis for the § 1512(c) charge, Defendant's motion for a bill of particulars should be denied.

The case law on this issue makes clear that Defendant's motion for a bill of particulars should be denied. Judge Boasberg denied Mostofsky's motion for a bill of particulars on a § 1512(c) count, rejecting the defendant's contention that he would be deprived of sufficient notice if the government did not answer whether he obstructed a proceeding by virtue of being in the building. *U.S. v. Mostofsky*, No. 21-138, 2021 WL 3168501, at 4* (D.D.C. July 27, 2021) ("While he may wish for more detail on the Government's form of proof at trial or its legal theories, it has sufficiently explained the basis of the charge"). Defendant is similarly not entitled to more information about specifically how the government will carry its burden of proof at trial, given the conduct already revealed in the Superseding Indictment and discovery about him entering the Senate chamber and appearing just outside the House Speaker's office. Moreover, through discovery, Defendant has access to pictures of himself in the Senate, outside the Speaker's office, and identifying witness statements. It is not difficult to deduce from that evidence how his conduct obstructed the proceeding on January 6, 2021.

Defendant's motion for a bill of particulars should be denied because the Superseding Indictment and discovery material provide more than enough information to enable him to understand how his conduct obstructed the certification of the electoral votes.

CONCLUSION

For the foregoing reasons, and any additional reasons as may be cited at a hearing on this motion, the government respectfully requests that the defendant's motion be denied.

Respectfully submitted,
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

LARRY BROCK,
Defendant.

Criminal Action No. 21-140 (JDB)

MEMORANDUM OPINION

Defendant Larry Brock is charged via indictment with six offenses related to the breach of the United States Capitol on January 6, 2021. See generally Superseding Indictment [ECF No. 24] (“Indictment”). Brock has filed four motions seeking, among other things, dismissal of one count, a transfer of venue, and further discovery. The Court will deny each motion for the reasons explained below.

Background

On January 6, 2021, the U.S. Congress convened in the Capitol for a joint session to certify the vote count from the November 2020 presidential election. *Aff. in Supp. of Criminal Compl.* [ECF No. 1-1] ¶ 6. The Capitol was closed to the public, but a large crowd was gathered outside. *Id.* ¶ 7. Around 2:00 p.m., members of the crowd violently forced their way into the Capitol, past officers of the U.S. Capitol Police and over barricades. *Id.* ¶ 8. Shortly after, members of the House of Representatives and Senate, as well as then-Vice President Michael Pence, were forced to evacuate and effectively suspend the joint session. *Id.* ¶ 9; see also *United States v. McHugh*, *Crim. A. No. 21-453 (JDB)*, 2022 WL 296304, at *1–2 (D.D.C. Feb. 1, 2022) (*McHugh I*) (further describing the violence and destruction on January 6).

The government alleges that Brock participated in this riot. See *Aff. in Supp. of Criminal Compl.* ¶¶ 11–16. According to the government, Brock entered the Capitol through the Senate

Wing Doors at approximately 2:24 p.m. on January 6th and was inside the Capitol for approximately 38 minutes. Mem. in Opp'n to Mot. to Compel Disc. [ECF No. 53] ("Opp'n to Disc. Mot.") at 2. The government alleges that during that time, Brock was outside the office of Speaker of the House Nancy Pelosi and on the Senate floor, and that he carried zip ties throughout. Id.; Gov't's Opp'n to Def.'s Mot. to Transfer Venue [ECF No. 50] ("Opp'n to Venue Mot.") at 2.

A grand jury charged Brock with six offenses via indictment: obstruction of an official proceeding and aiding and abetting in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); entering and remaining in a restricted building and grounds in violation of 18 U.S.C. § 1752(a)(1) (Count Two); disorderly and disruptive conduct in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(2) (Count Three); entering and remaining on the floor of Congress in violation of 40 U.S.C. § 5104(e)(2)(A) (Count Four); disorderly conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Five); and parading, demonstrating, or picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Six). Indictment at 1–3. On July 1, 2022, Brock filed the four motions now before the Court: (1) a motion to dismiss Count One—the charge under 18 U.S.C. § 1512—or, in the alternative, for an order requiring the government to provide a bill of particulars, see generally Mot. to Dismiss Count I or in the Alternative for a Bill of Particulars [ECF No. 46] ("Mot. to Dismiss"); (2) a motion to transfer venue, see generally Mot. to Adopt Mot. of Other January 6th Defendant and for Change of Venue [ECF No. 47] ("Venue Mot."); (3) a motion to compel additional discovery from the government, see generally Mot. to Compel Disc. [ECF No. 48] ("Disc. Mot."); and (4) a motion to compel discovery on selective prosecution, see generally Mot. to Compel Disc. on Selective Prosecution [ECF No. 49] ("Selective Prosecution Mot."). The government timely opposed each motion on July 22, 2022. See generally Opp'n to Def.'s Mot. to Dismiss [ECF No. 54] ("Opp'n to Mot. to Dismiss"); Opp'n to Venue Mot.; Opp'n to Disc. Mot.; Mem. in Opp'n to Selective Prosecution Mot. [ECF No. 55]

(“Opp’n to Selective Prosecution Mot.”). Brock has not filed any replies. The motions are now ripe for decision.

Analysis

I. Motion to Dismiss

Brock’s first motion is styled “Motion to Dismiss Count I or in the Alternative for a Bill of Particulars.” Mot. to Dismiss at 1. The motion identifies two reasons why the indictment should be dismissed for failure to state an offense. First, relying on United States v. Miller, Crim. A. No. 1:21-CR-00119 (CJN), 2022 WL 823070 (D.D.C. Mar. 7, 2022), appeal docketed, No. 22-3041 (D.C. Cir. June 28, 2022), Brock argues that 18 U.S.C. § 1512(c)(2) applies only to obstruction that involves documents or records. Mot. to Dismiss at 2. Second, he argues that the facts he expects the government to present would not “constitute an attempt to obstruct” the certification of the Electoral College vote. Id. at 2–3.

“[A]n indictment’s main purpose is ‘to inform the defendant of the nature of the accusation against him.’” United States v. Hitt, 249 F.3d 1010, 1016 (D.C. Cir. 2001) (quoting Russell v. United States, 369 U.S. 749, 767 (1962)). Under the Federal Rules of Criminal Procedure, the indictment need contain only “a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1); accord United States v. Ballestas, 795 F.3d 138, 149 (D.C. Cir. 2015).

Pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B)(v), a defendant may move to dismiss the indictment against him for “failure to state an offense.” Relevant here, if the statutory provision at issue does not cover the charged offense, the indictment “fail[s] to state an offense.” McHugh I, 2022 WL 296304, at *3 (citing United States v. Montgomery, 578 F. Supp. 3d 54, 59 (D.D.C. 2021)). In assessing whether to grant a motion to dismiss under Rule 12(b)(3)(B)(v), a court considers whether the allegations in the indictment, assumed to be true, “would be sufficient

to permit a jury to find that the crimes charged were committed.” United States v. Bozell, No. 21-CR-216 (JDB), 2022 WL 474144, at *2 (D.D.C. Feb. 16, 2022) (citation omitted). Courts dismiss indictments “only in unusual circumstances.” Ballestas, 795 F.3d at 148.

The statute under which Brock is charged in Count One reads:

(c) Whoever corruptly--

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1512(c).

Brock first asks that this Court dismiss Count One, charging a violation of 18 U.S.C. § 1512(c)(2), “for the reasons offered in” Miller. Mot. to Dismiss at 1. In Miller, Judge Nichols construed § 1512(c)(2) to cover only actions taken “with respect to a document, record, or other object in order to corruptly obstruct, impede or influence an official proceeding.” 2022 WL 823070, at *15. This Court, however, has already considered and declined to adopt the reasoning and holding of Miller. See United States v. McHugh, Crim. A. No. 21-453 (JDB), 2022 WL 1302880, at *2–12 (D.D.C. May 2, 2022) (McHugh II). McHugh II is in line with previous decisions from this Court, see, e.g., Bozell, 2022 WL 474144, at *5, as well as every other district court to consider the issue addressed in Miller. See, e.g., United States v. Grider, Crim. A. No. 21-022 (CKK), 2022 WL 3016775, at *3 n.3 (D.D.C. July 29, 2022) (collecting cases).

The Court’s view has not changed. As explained in McHugh II, § 1512(c)(2) “applies to the ‘myriad means that human ingenuity might devise to permit a person to’ obstruct an official proceeding,” not only to those involving documents or records. 2022 WL 1302880, at *7 (quoting Collazos v. United States, 368 F.3d 190, 200 (2d Cir. 2004)). This reading is compelled by the

statute’s text, id. at *4–7, structure, id. at *7–10, statutory history, id. at *10, and legislative history, id. at *11–12, as well as principles of statutory construction, id. at *8–9, 11. Particularly given that Brock raises “no substantive argument for reconsideration” of the Court’s previous decisions on the issue, Grider, 2022 WL 3016775, at *3, the Court has no trouble rejecting this argument.

Brock also argues that § 1512(c)(2) “does not apply to” his alleged conduct. Mot. to Dismiss at 2. By his telling, the government is not “going to allege that [he] entered the United States Capitol until after [the official] proceeding had adjourned,” and therefore the government does not assert “that any of his actions were the cause of the proceeding’s adjournment.” Id. In essence, he asks this Court to (a) construe § 1512(c)(2) to cover only actions that happened before a proceeding was first obstructed, influenced, or impeded and (b) in the context of January 6, find that only actions taken within the Capitol Building were a “cause” of the obstruction or impediment of the joint session of Congress. Brock argues that the government has not alleged these elements and therefore has not alleged conduct that violates the statute. Id. at 2–3. This argument fails on all fronts.

First, § 1512(c)(2) is not so temporally limited. The statute covers anyone who “corruptly . . . obstructs, influences, or impedes any official proceeding, or attempts to do so.” 18 U.S.C. § 1512(c)(2). The government may argue that a wide range of actions—including actions that happened after the joint session had been suspended in light of the rioting mob that had entered the Capitol—“obstructed, influenced, or impeded” the joint session. The joint session continued to be obstructed, influenced, and impeded even after Vice President Pence and Members of Congress had fled, as it continued to remain in limbo as the January 6 mob flooded the Capitol throughout the day. See Bozell, 2022 WL 474144, at *4 (concluding that the relevant question is whether acts obstructed, influenced, or impeded “the January 6 Certification as a whole” (citing 167 Cong. Rec. H85–H87 (daily ed. Jan. 6, 2021))).

Even if the Court construed the statute to require allegations of an action that happened before the initial obstruction—which it does not—Brock’s challenge would still fail. In his motion, Brock focuses on the moment he “entered the United States Capitol.” Mot. to Dismiss at 2. But again, § 1512(c) is not so geographically limited: the obstruction, influence, or impediment of the joint session, or the attempt to do so, surely could have happened before Brock set foot in the Capitol Building. See, e.g., United States v. Reffitt, No. 21-CR-32 (DLF), 2022 WL 1404247, at *3 (D.D.C. May 4, 2022) (upholding jury’s conviction of January 6 defendant under § 1512(c)(2) despite the fact that the defendant “never entered the Capitol building”).

Given the wide scope of § 1512, Brock’s argument that the indictment fails to allege action covered by the statute fails. There is no requirement that the government allege actions taken before the joint session was suspended; nor a requirement that it allege Brock entered the Capitol at any time, let alone before the joint session was suspended. The indictment alleges that on January 6, 2021, Brock “attempted to, and did, corruptly obstruct, influence, and impede an official proceeding . . . specifically, Congress’s certification of the Electoral College vote.” Indictment at 1–2. There are no additional temporal or geographic details required by § 1512(c)(2) that the government needed to allege. The indictment sufficiently alleges conduct that, if proven,¹ would violate the statute.

II. Bill of Particulars

¹ The government spends much of its opposition arguing that the Court cannot review the sufficiency of the evidence against Brock at this stage in the proceedings. See Opp’n to Mot. to Dismiss at 8–9. Brock does not appear to dispute this proposition, Mot. to Dismiss at 2–3, but instead argues that the indictment does not allege a violation of § 1512(c). The Court agrees that a challenge to the sufficiency of the evidence would be premature at this stage.

In the alternative, Brock requests that if the Court does not dismiss the charge under § 1512(c), the Court instead should order the government to provide a bill of particulars, as the “indictment makes no allegations as to which of his actions could have been obstructive of a proceeding that had already adjourned.” Mot. to Dismiss at 3.

Under the Federal Rules of Criminal Procedure, upon request, a “court may direct the government to file a bill of particulars.” United States v. Sutton, Crim. No. 21-0598 (PLF), 2022 WL 1183797, at *2 (D.D.C. Apr. 21, 2022) (quoting Fed. R. Crim. P. 7(f)). “A bill of particulars is a formal written statement by the government that provides details of the charges in the indictment.” Id. A defendant may request a bill of particulars “to ensure that the charges brought against [him] are stated with enough precision to allow [him] to understand the charges, to prepare a defense, and perhaps also to be protected against retrial on the same charges.” United States v. Mostofsky, No. CR 21-138 (JEB), 2021 WL 3168501, at *1 (D.D.C. July 27, 2021) (alterations in original) (quoting United States v. Butler, 822 F.2d 1191, 1193 (D.C. Cir. 1987)). The decision to grant that request and direct the government to provide a bill of particulars falls “within the sound discretion of the trial court.” Butler, 822 F.2d at 1194; see also Fed. R. Crim. P. 7(f). Courts rarely direct the government to file a bill of particulars, doing so only when “necessary to allow the defendant[] to adequately prepare for and avoid surprise at trial.” Sutton, 2022 WL 1183797, at *2 (citation omitted). A bill of particulars “may not be used by a defendant as a discovery tool or a device to preview the government’s evidence or theory of the case.” Id. Courts consider “the complexity of the crime charged, the clarity of the indictment, and the degree of discovery and other sources of information otherwise available to the defendants.” Id. (quoting 1 Charles Alan Wright & Andrew D. Leipold, Federal Practice and Procedure § 130 (4th ed. 2021)).

Brock argues that because the evidence the government has provided only shows Brock entering the Capitol after members of the U.S. Senate and U.S. House of Representatives had left,

the government has not provided any evidence of Brock's alleged obstruction of an official proceeding. Mot. to Dismiss at 3. Therefore, he claims, a bill of particulars is necessary to give notice of which actions the government will allege obstructed an official proceeding. Id.

This argument is, at its core, a repackaging of his argument that the indictment does not identify an action that, if proven, would be sufficient to state an offense under § 1512(c)(2). As discussed above, that argument fails as a matter of statutory interpretation, and it fares no better styled as a request for a bill of particulars. The government has provided Brock with notice of which proceeding he is alleged to have obstructed, photos and videos of himself performing the acts that the government alleges form the basis of the charge, and witness statements describing his conduct. Opp'n to Mot. to Dismiss at 10; see also Opp'n to Disc. Mot. at 2–4 (describing breadth of evidence provided to Brock, as well as specific videos of his entry into and exit from the Capitol). The fact that Brock does not believe that this evidence amounts to a violation of § 1512(c)(2) is “more an issue of statutory interpretation than one of insufficient factual support,” Mostofsky, 2021 WL 3168501, at *4, and settling that issue is “not the role of a bill of particulars,” id. at *3. In its opposition, the government does not suggest that there is other, unidentified evidence of Brock's presence at the Capitol earlier than approximately 2:24 p.m., see Opp'n to Disc. Mot. at 2, and any such evidence would be contradicted by the evidence the government has described to this Court and provided to Brock. Regardless, Brock does not seem to suggest factual ambiguity, only that the government explain how the clearly described conduct falls under the statute. But that is an argument for reconsideration of this Court's interpretation of the statute, not an argument for a bill of particulars. See Mostofsky, 2021 WL 3168501, at *3.

III. Motion for Change of Venue

The Constitution establishes that “[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed,” U.S. Const. art. III, § 2, and the Federal Rules

of Criminal Procedure narrow the default venue to “a district where the offense was committed,” Fed. R. Crim. P. 18. But if a defendant requests a transfer and demonstrates that “so great a prejudice against the defendant exists in the [original] district that the defendant cannot obtain a fair and impartial trial there,” a court must transfer the defendant’s trial to a different venue. Fed. R. Crim. P. 21(a); see also Skilling v. United States, 561 U.S. 358, 378 (2010) (“The Constitution’s place-of-trial prescriptions, however, do not impede transfer of the proceeding to a different district at the defendant’s request if extraordinary local prejudice will prevent a fair trial . . .”).

To show prejudice, a defendant must show more than juror familiarity with the case, or even a preliminary opinion of its merits. See Skilling, 561 U.S. at 380 (“[J]uror exposure to . . . news accounts of the crime” does not “alone presumptively deprive[] the defendant of due process.” (citation omitted) (first alteration in original)); Irvin v. Dowd, 366 U.S. 717, 723 (1961) (“To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror’s impartiality would be to establish an impossible standard.”). A defendant must show that the local population is “so aroused against [the defendant] and so unlikely to be able objectively to judge [the defendant’s] guilt or innocence on the basis of the evidence presented at trial that [the defendant’s] due process rights [will be] violated” if the case were not transferred. United States v. Haldeman, 559 F.2d 31, 62 (D.C. Cir. 1976) (en banc) (per curiam). This prejudice exists only in “extreme circumstances.” Id. at 60 (citation omitted). In almost all circumstances, the proper time to make this determination is after jurors have been given a chance to show whether they can, in fact, be impartial—that is, after voir dire. Id. at 63–64.

Brock, like many other individuals charged with conduct stemming from the January 6 attack on the Capitol, requests a change of venue. He does so by moving to “adopt” the motion of

another January 6th defendant made before this Court,² Venue Mot. at 1; see also Mot. to Change Venue, United States v. McHugh, 1:21-cr-453 (JBD) (D.D.C. March 15, 2022), ECF No. 55 (“McHugh Venue Mot.”), which the Court denied without prejudice, McHugh, 1:21-cr-453 (JBD) (D.D.C. May 4, 2022), Min. Entry, May 4, 2022 (“May 4 Min. Entry”). The adopted motion argues that January 6th defendants’ rights to a fair and impartial jury would be compromised by a trial in Washington, D.C.—that the “hostility of the venue community is so severe that it gives rise to a presumption of juror prejudice,” such that the change of venue motion should be granted before a jury is empaneled. McHugh Venue Mot. at 2, 18. The Court denied McHugh’s motion without prejudice on May 4, 2022. May 4 Min. Entry. Other courts in this district have similarly denied motions to transfer venue filed by January 6th defendants, noting that the events of January 6th and the ensuing media coverage do not constitute the “extreme circumstances” necessary to presume prejudice prior to voir dire. See, e.g., United States v. Garcia, Crim. A. No. 21-0129 (ABJ), 2022 WL 2904352, at *15 (D.D.C. July 22, 2022); United States v. Rhodes, No. 22-cr-15 (APM), 2022 WL 2315554, at *21–23 (D.D.C. June 28, 2022); United States v. Boche, Crim. A. No. 21-418 (RDM), 2022 WL 123893, at *2 (D.D.C. Jan. 12, 2022).

Given the in-depth treatment afforded to this issue already, the Court will only briefly summarize its reasons for denying Brock’s motion, which are in line with those of other courts in similar cases. As described above, Brock’s motion adopts in their entirety the arguments put forth

² The Court notes that Brock’s motion to adopt a motion filed by a defendant in a different case is unusual. Cf. Fed. R. App. P. 28(i) (permitting co-appellants to “adopt by reference a part of another’s brief”). The government does not oppose the motion to adopt, but asks the Court for leave to incorporate its opposition to the motion in McHugh. See Opp’n to Venue Mot. at 2–3. In light of the government’s response and the applicability of the arguments made in the adopted motion to Brock’s case, the Court will grant Brock’s motion to adopt the filing in McHugh, and will take into consideration the government’s arguments made in both the opposition filed here and those made in its opposition in McHugh. See generally Opp’n to Mot. to Change Venue, McHugh, 1:21-cr-453 (JBD), ECF No. 58 (D.D.C. April 7, 2022).

(and rejected) in the venue motion made in McHugh.³ Brock also adds two new facts to bolster those arguments. See Venue Mot. at 2–3. But the additional facts do not change the Court’s conclusion that, at this stage, there is no reason to believe that voir dire will be ineffective in removing any potential bias or prejudice against Brock.

As relevant here, courts look to three factors in determining whether there is a presumption of prejudice in a given jury pool: (1) the size and characteristics of the jury pool; (2) the type of information included in the media coverage; and (3) the time period between the arrest and trial, as it relates to the attenuation of the media coverage. Skilling, 561 U.S. at 382–84. Notably, only once has the Supreme Court found a presumption of prejudice; in Rideau v. Louisiana, 373 U.S. 723 (1963), a case where the defendant’s taped confession was broadcast to as much as a third of the venire, making his trial a “kangaroo court”—the interrogation and taped confession “in a very real sense was Rideau’s trial—at which he pleaded guilty.” 373 U.S. at 726; see also id. at 725 (describing the video as showing “Rideau, in jail, flanked by the sheriff and two state troopers, admitting in detail the commission of the robbery, kidnapping, and murder, in response to leading questions by the sheriff”). As several courts have recognized, the facts of Rideau bear little resemblance to the facts of Brock’s, McHugh’s, and other January 6th defendants’ cases. See, e.g., Garcia, 2022 WL 2904352, at *8 n.16.

First, Washington, D.C.’s “size and characteristics” weigh against transfer. The Supreme Court has recognized a “reduced likelihood of prejudice where [the] venire was drawn from a pool of over 600,000 individuals.” Skilling, 561 U.S. at 382 (citing Gentile v. State Bar of Nev., 501 U.S. 1030, 1044 (1991) (plurality opinion)); see also United States v. Taylor, 942 F.3d 205, 223 (4th Cir. 2019) (noting the same with respect to Baltimore’s population of 621,000). Washington,

³ For simplicity, the court will cite the venue motion made in McHugh when discussing arguments first raised there and will cite Brock’s motion only when discussing any new arguments Brock raises.

D.C. has over 600,000 residents. See America Counts Staff, The District of Columbia Gained More Than 87,000 People in 10 Years, U.S. Census Bureau (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/district-of-columbia-population-change-between-census-decade.html> (estimating D.C.’s population as 689,545). Perhaps recognizing that, McHugh’s motion focuses primarily on the “characteristics” of D.C., noting the high proportion of federal workers; the stories of D.C. residents who were “deeply traumatized” by their proximity to the events of January 6th; and the “electoral makeup” of the District. McHugh Venue Mot. at 4–8.

None of these characteristics suggest a community-wide bias that voir dire is ill-designed to remove. Employment by the federal government is precisely the type of information that the defendant may elicit from potential jurors during voir dire. See Bochene, 2022 WL 123893, at *2 (concluding that federal government employment was “exactly the kind of conjecture that is insufficient to warrant transfer prior to jury selection”). The motion refers to anecdotes of trauma felt by D.C. residents; however, the Court has no basis to conclude such trauma is felt by a substantial portion of the venire, nor does the motion offer a reason to believe those who were traumatized to the point of bias would fail to report that during voir dire questioning. Finally, the fact that a majority of Washington, D.C. residents have historically voted for Democrats is not “at all pertinent to venue.” Haldeman, 559 F.2d at 64 n.43 (denying motion to change venue in Watergate-related trial and rejecting evidence of D.C.’s political leanings); see also Order, Apr. 18, 2022, at 6–7, United States v. Alford, No. 21-cr-263 (TSC) (D.D.C. April 18, 2022), ECF No. 46 (concluding that “assumptions concerning party affiliation in the District are not an appropriate

basis for changing venue” and any “impressions or opinions . . . based on [defendant’s] presumed political views” could “be assessed during voir dire”).⁴

The McHugh motion also attaches the results of a telephone poll conducted by a private polling firm of 400 D.C. residents and 400 Atlanta residents. Ex. 1 to Mot. to Change Venue at 1, McHugh, 1:21-cr-453 (JBD) (D.D.C. Mar. 15, 2022), ECF No. 55-1 (“Select Litigation Survey”). The poll included questions about respondents’ familiarity with and attitudes towards January 6th defendants. Id. at 4–5.

As an initial matter, public opinion polling commissioned by one party is often less probative than a “recorded, comprehensive voir dire examination conducted by the judge in the presence of all parties and their counsel.” Haldeman, 559 F.2d at 64 n.43; see also United States v. Campa, 459 F.3d 1121, 1129, 1147 (11th Cir. 2006) (en banc) (concluding that voir dire procedures “more thoroughly evaluated the sentiment of the Miami-Dade community” than a survey commissioned showing 69% of respondents were prejudiced against the defendants). Among other issues, surveys suffer from design flaws that can bias the results. The survey included here is illustrative. Many of the questions were drafted using impossibly broad language—“Are you more likely to vote that [a January 6th defendant] is guilty or not guilty of [the] charges?” Select Litigation Survey at 14. To make matters worse, respondents were not given an option to share that they had not yet formed an opinion as to the guilt of every January 6th defendant—the choices offered were “guilty” or “not guilty.” Id. Despite that, almost 50% of respondents in Washington, D.C. volunteered that they did not have a fixed opinion, answering

⁴ Brock adds one new fact in support of his argument that the characteristics of Washington, D.C. support a change in venue: in the recent mayoral primaries, over 120,000 D.C. residents voted in the Democratic primary, and fewer than 2,500 residents voted in the Republican primary. Venue Mot. at 2–3. Not only do these numbers represent a small percentage of D.C.’s population overall, but even assuming they suggest D.C. is overwhelmingly Democratic, they are cumulative of evidence presented in McHugh’s motion, and do not sway this Court’s opinion.

either “[d]epends” or “[d]on’t know/[r]efused” (suggesting that at least half of the venire has no preconception of guilt, let alone an unshakable one). Id.

To the extent they are credited, the survey’s results are mixed. The results do suggest that Washington, D.C. residents have an unfavorable opinion of those arrested for January 6th-related activities. Select Litigation Survey at 14 (reporting 84% of D.C. residents have unfavorable opinion of people arrested for participating in January 6th events, as opposed to 54% of Atlanta residents). But importantly for the question of impartiality, the results also suggest that an overwhelming majority—80%—of D.C. respondents believe that January 6th defendants will receive a fair trial in D.C. See id. And as described above, almost half of the respondents refused to say that they were more likely to find a January 6th defendant guilty. In short, the survey questions are neither reliable enough to act as a substitute for voir dire, nor convincing enough to merit a change in venue at this stage. See, e.g., Garcia, 2022 WL 2904352, at *11–13 (rejecting the same survey and denying motion to change venue in January 6th case).

Turning to the second factor, the type of information included in the media coverage was not the “blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight.” Skilling, 561 U.S. at 382. Brock, through adoption, is correct that the events of January 6th received substantial news coverage. See Select Litigation Survey at 8–10. But “[t]he mere existence of intense pretrial publicity is not enough to make a trial unfair, nor is the fact that potential jurors have been exposed to this publicity.” United States v. Childress, 58 F.3d 693, 706 (D.C. Cir. 1995). If that were the case, then, by defendant’s own telling, even Atlanta would be unavailable as a forum, as the Atlanta coverage could similarly be characterized as “intense pretrial publicity.” See, e.g., Select Litigation Survey at 9–10 (citing data showing that the Atlanta Journal-Constitution ran almost 100 articles, and that local broadcasts in Atlanta ran over 4,000 stories, about January 6th in the year following the events); see also United States v.

Chapin, 515 F.2d 1274, 1288 (D.C. Cir. 1975) (“[P]recedent demands that the court take into account whether the publicity is sufficiently localized that potential jurors in another area would be free of any taint from exposure to the press, enabling the change to serve its purpose.”). Rather, only pretrial publicity analogous to the “inherently prejudicial” and “unforgettable . . . spectacle of Rideau’s dramatically staged and broadcast confession” is inflammatory enough to presume prejudice. Haldeman, 559 F.2d at 61. McHugh, and hence Brock, identify public statements and reports that offer more editorializing than others, see, e.g., McHugh Venue Mot. at 13, but the fact that some coverage may be “hostile in tone and accusatory in content” is not enough to show prejudice when “[t]he overwhelming bulk of the material submitted . . . consists of straightforward, unemotional factual accounts of events,” Haldeman, 559 F.2d at 61 (footnote omitted). Indeed, courts have repeatedly denied venue transfers in cases with similar news coverage—in both scope and tone—to this case. See, e.g., Skilling, 561 U.S. at 428 (Sotomayor, J., concurring in part and dissenting in part) (“[L]ocal media coverage of the story saturated the community.”); Haldeman, 559 F.2d at 61 n.34 (“[T]he pretrial publicity in this case was extraordinarily extensive”); In re Tsarnaev, 780 F.3d 14, 21–22 (1st Cir. 2015) (per curiam) (noting “there has been extensive publicity in this case,” but not “of the grossly prejudicial character that attended Rideau”).

In contrast to those cases, Brock identifies no pretrial publicity that mentions him. “[W]hen publicity is about the event, rather than directed at individual defendants, this may lessen any prejudicial impact.” Skilling, 561 U.S. at 384 n.17 (alteration in original) (citation omitted); see also Garcia, 2022 WL 2904352, at *9 (noting that “this particular [January 6th prosecution] has not been subject of attention”). Even in the most high-profile cases, courts reject challenges where the defendant cannot show that members of the venire have knowledge of or an opinion about the defendant himself, even when he was a part of a highly publicized event. See, e.g., United States v. Yousef, 327 F.3d 56, 155 (2d Cir. 2003) (rejecting World Trade Center bombing suspect’s bias

claim because “the jurors that were picked had either never heard of Yousef or could not remember any of the details of his alleged involvement”). Absent any publicity about Brock himself, it is difficult to conclude that his case will feature a venire that prejudices his guilt or innocence in particular.

Finally, as the D.C. Circuit has noted, courts should avoid relying too heavily on pre-trial publicity to establish prejudice, as such an inquiry is only an “attempt to determine from [the court’s] own reactions how the community would respond to that publicity.” Haldeman, 559 F.2d at 62 n.37. “After the voir dire a judge can determine which description of the publicity’s impact is accurate; before the voir dire a judge” can only guess. Id. For Brock, any impact pretrial publicity may have on potential jurors can, and should, be probed and rooted out through voir dire. But the Court could only guess at this stage as to what, if any, impact generalized and primarily factual reporting of the events of January 6th will have on a relatively unknown defendant such as Brock; and such publicity does not compel a finding of bias in the venire as a whole.

The final factor is the time period between the arrest and trial. By the time of Brock’s trial in November 2022, almost two years will have passed since January 2021. Two years is enough time, in general, for the “decibel level of publicity about the crimes themselves to drop and community passions to diminish.” Tsarnaev, 780 F.3d at 22. Brock adds one additional fact in support of his motion: the House Select Committee to Investigate the January 6th Attack on the United States Capitol has continued to hold hearings over the past three months, “reignit[ing] coverage” of January 6th. Venue Mot. at 2. The Court agrees that these hearings make the passage of time somewhat less significant. It does not, however, change the conclusion here—the content and nature of the January 6th coverage, including the Select Committee hearings, are not so inflammatory as to bias the entire Washington, D.C. community. See Rhodes, 2022 WL 2315554, at *22 (“[M]edia coverage has been heavy due to the ongoing public hearings of the Select

Committee But even if news coverage does not ebb, ‘pretrial publicity even pervasive, adverse publicity does not inevitably lead to an unfair trial.’” (citation omitted)). Even if the content were inflammatory, the Select Committee hearings were broadcast nationally, and Brock has offered no evidence demonstrating that Washington, D.C. residents were a disproportionate percentage of the viewership. See Tsarnaev, 780 F.3d at 22. Again, a vigorous voir dire should suffice to root out any bias in individual jurors.

IV. Motions to Compel Discovery

Brock has filed two motions to compel discovery. He asks for four categories of discovery: (a) specific information and evidence demonstrating his peaceful behavior, Disc. Mot. at 2; (b) evidence of his entry to the U.S. Capitol and/or restricted areas, id. at 3; (c) evidence of law enforcement’s involvement in the attack on the Capitol, id. at 3–4; and (d) evidence of selective prosecution, Selective Prosecution Mot. at 6.

Upon a defendant’s request, the government must “permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government’s possession, custody, or control” and, relevant here, “the item is material to preparing the defense.” Fed. R. Crim. P. 16(a)(1)(E)(i). The government also has an affirmative duty under Brady v. Maryland, 373 U.S. 83, 87 (1963), to disclose “evidence in its possession that is favorable to the accused and material either to a defendant’s guilt or punishment,” United States v. Trie, 21 F. Supp. 2d 7, 23 (D.D.C. 1998). Evidence is material if there is a “reasonable probability” that it would impact the outcome of the proceeding. United States v. Bagley, 473 U.S. 667, 682 (1985). Rule 16 applies only to evidence that may influence or impact the outcome of a defendant’s trial or sentencing; evidence related to “an independent constitutional bar to the prosecution,” not

“refutation of the government’s case in chief,” falls outside of the rule’s scope. United States v. Rashed, 234 F.3d 1280, 1285 (D.C. Cir. 2000).

Relevant here, there are two claims criminal defendants may bring under the Due Process Clause of the Fifth Amendment. First, the Supreme Court has suggested that it may “some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction,” United States v. Russell, 411 U.S. 423, 431–32 (1973), though the Court “has never actually accepted this defense as grounds for dismissing an indictment,” al-Baluchi v. Esper, 392 F. Supp. 3d 46, 65 (D.D.C. 2019). Defendants making such a claim face an onerous standard: the “requisite level of outrageousness . . . is not established merely upon a showing of obnoxious behavior or even flagrant misconduct on the part of the police.” United States v. Kelly, 707 F.2d 1460, 1476 (D.C. Cir. 1983) (per curiam). Instead, the defendant must show “coercion, violence, or brutality to the person.” Id. (quoting Irvine v. California, 347 U.S. 128, 133 (1954)). “Whether particular government conduct was sufficiently outrageous to meet this standard is a question of law,” United States v. Boone, 437 F.3d 829, 841 (8th Cir. 2006), and if the standard were met, the proper remedy would be dismissal of the indictment, al-Baluchi, 392 F. Supp. 3d at 65.

Second, a defendant may bring a selective prosecution claim under the equal protection component of the Fifth Amendment. Despite its broad grant of prosecutorial discretion, the government may not base the decision to prosecute on “an unjustifiable standard such as race, religion, or other arbitrary classification.” United States v. Armstrong, 517 U.S. 456, 464 (1996) (citation omitted). There is a “presumption that a prosecutor has not violated equal protection,” id. at 465, and a defendant must present “clear evidence to the contrary” to succeed on such a claim, id. (citation omitted). To make out a selective prosecution claim, a defendant must show

that the challenged prosecution policy “ha[s] a discriminatory effect and that it was motivated by a discriminatory purpose.” Id. at 457.

To show a discriminatory effect in prosecution policies, “a defendant must show that the Government afforded ‘different treatment’ to persons ‘similarly situated’ to him.” United States v. Judd, Case No. 1:21-cr-00040 (TNM), 2021 WL 6134590, at *2 (D.D.C. Dec. 28, 2021) (quoting Armstrong, 517 U.S. at 470). “When a person’s circumstances ‘present no distinguishable legitimate prosecutorial factors that might justify’ different prosecutorial decisions between him and the defendant, that person is similarly situated to the defendant.” Id. at *2 (quoting Branch Ministries v. Rossotti, 211 F.3d 137, 145 (D.C. Cir. 2000)). Courts “‘narrowly’ interpret the phrase ‘similarly situated.’” Id. (quoting United States v. Stone, 394 F. Supp. 3d. 1, 31 (D.D.C. 2019)).

Courts impose a correspondingly “rigorous standard” for discovery in support of a claim of selective prosecution, Armstrong, 517 U.S. at 468; a defendant must present “‘some evidence tending to show the existence of the essential elements of the defense,’ discriminatory effect and discriminatory intent,” id. (citation omitted).

Brock first describes video footage of himself “attempt[ing] to break up” a confrontation between “an African American man wearing a blazer” and “a protestor.” Disc. Mot. at 2. He requests information related to the video, including “additional video evidence” of the events, and “the name and contact information” for the “African American man.” Id. In response, the government notes it has provided Brock with the “location, time, and numbers of cameras” that may have captured the altercation, and instructions on how to locate that footage in its discovery productions. Opp’n to Disc. Mot. at 2. As to the name and contact information for the man, Brock describes him only as an “African American man.” Disc. Mot. at 2. The government’s response suggests that he may be a member of the United States Capitol Police. See Opp’n to Disc. Mot. at

2. Neither side, then, suggests that this man’s identity is either known to the Department of Justice or within its possession, and the government is therefore under no obligation to provide it. See United States v. Nordean, Crim. A. No. 21-175 (TJK), 2022 WL 2292062, at *2 n.4 (D.D.C. June 24, 2022) (“[T]he Government need not—indeed, it cannot—produce information or materials ‘in the possession of Congress’ but not in the possession of the Department of Justice or another executive agency.” (citation omitted)); see also Cong. Rsch. Serv., The U.S. Capitol Police: Brief Background at 1 (July 29, 2021) (noting the “U.S. Capitol Police is a department within the legislative branch”). It appears, then, that there is no outstanding information Brock requests from this video that the prosecution has an obligation to provide under Brady or Rule 16.

Brock next describes his exit from the Capitol, and notes there may be an officer who “would have observed Mr. Brock persuade another individual who was behaving in a disorderly manner to exit the building with him peacefully.” Disc. Mot. at 2. He asks for that officer’s name, the status of his body camera, and/or any notes taken. Id. at 3. The government represents that it has identified “the Agency the officer works for” and provided “CCV footage of the altercation” and the status of body camera footage. Opp’n to Disc. Mot. at 3. Brock has not responded to these assertions.

On the record before it, the Court cannot determine whether the exact identity of the officer is within the government’s possession such that it could be discoverable under Brady. Regardless, Brock has not shown how the exact identity of the officer is material to his guilt or punishment. Evidence is material under Brady “if there is a ‘reasonable probability’ that its disclosure could affect the outcome of the case.” United States v. Harris, No. CRIM. 06-00124 (ESH), 2006 WL 2882711, at *2 (D.D.C. Oct. 5, 2006) (quoting Bagley, 473 U.S. at 682). Evidence that is “cumulative of information to which [the defendant] already has access” does not meet this standard. Id. Brock requested the identification of the officer because the officer “would have

observed” Brock’s alleged peaceful behavior, and presumably been able to testify to it. Disc. Mot. at 2–3. Even assuming evidence of Brock’s peaceful behavior in that moment would have a “reasonable probability” of affecting the outcome of the case, the CCV footage from the government would show Brock’s behavior, making a description of the incident from the officer cumulative.

Brock notes that he has been “unable to locate a video alleged to show his entrance to the [C]apitol building and/or any restricted area.” Disc. Mot. at 3. In its opposition, the government reports it has, as of July 22, 2022 (three weeks after Brock filed his motion), re-uploaded the “case-specific videos” showing Brock’s movements. Opp’n to Discovery Mot. at 3. Absent a reply from Brock disputing the government’s claims, the Court finds the government has satisfied its obligations to provide such video.

Brock’s third category of discovery requests seeks “evidence of informants, undercover agents, cooperating sources and other similar persons present at the Capitol on January 6.” Disc. Mot. at 3 (cleaned up). This evidence, he argues, would be used to show that law enforcement’s behavior on January 6th was “so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction.” *Id.* (quoting *Russell*, 411 U.S. at 431–32). As an initial matter, to the Court’s knowledge, no court has identified the standard the defendant must meet to obtain discovery for this purpose. The D.C. Circuit has indicated that material sought to establish “an independent constitutional bar to prosecution” is not discoverable under Federal Rule of Criminal Procedure 16, as it is not used to “refut[e] . . . the government’s case in chief.” *Rashed*, 234 F.3d at 1285; *see also* Fed. R. Crim. P. 16(a)(1)(E)(i) (requiring disclosure of information “material to preparing the defense”); *Armstrong*, 517 U.S. at 462 (stating that Rule 16 applicable only to “‘shield’ claims, which refute the Government’s arguments that the defendant committed the crime charged”).

In his motion, Brock requests this information “as Brady information.” Disc. Mot. at 4. However, he fails to explain how the requested discovery would qualify as information material to his “guilt or to punishment,” as required under Brady. See 373 U.S. at 87. The fact that a court may exercise its supervisory power to dismiss an indictment on the basis of the government’s conduct has no bearing on the defendant’s actual guilt or innocence. Moreover, Brock does not allege that his actions that day were caused by an informant, undercover agent, or cooperating source, or that he was somehow entrapped by the government’s actions. See Disc. Mot. at 3–4. Brock has not shown how the requested material would have any relevance to his guilt or punishment, let alone rise to the level of materiality, and the Court declines to order such wide-sweeping discovery that is, in essence, simply a fishing expedition.⁵

Brock’s final motion requests discovery on selective prosecution. He describes protests in Portland, Oregon during the summer of 2020 where protesters damaged federal buildings, in some instances using violent means like Molotov cocktails or arson. Selective Prosecution Mot. at 4–5 (citing Aff. in Supp. of Criminal Compl. ¶¶ 6–8, United States v. Bouchard, No. 20-mj-165 (D. Ore. July 24, 2020), ECF No. 1-1 (describing the Portland protests)). Brock then argues that the difference in charging decisions for the Portland protestors and the January 6th rioters can “only be explained by a bias in DOJ leadership in favor of liberal causes such as police reform and against conservative causes such as election integrity or support for Donald Trump.” Selective Prosecution Mot. at 5. Brock’s motion, however, does not even attempt to make the “rigorous” showing required to obtain discovery on a selective prosecution motion. See Armstrong, 517 U.S.

⁵ Discovery requests based on independent constitutional claims, such as selective prosecution, are often evaluated under the framework set forth in Armstrong—the defendant must offer “some evidence tending to show the existence” of the constitutional violation. See, e.g., United States v. Oseguera Gonzalez, 507 F. Supp. 3d 137, 175 (D.D.C. 2020) (citation omitted) (extending this framework to vindictive prosecution claims). The Court does not decide here whether such a framework would be appropriate for “outrageous” government conduct claims under the Due Process clause, but notes that Brock has not provided any evidence to suggest the government had informants or undercover agents on January 6th, let alone that their presence constituted outrageous government conduct.

at 468. He must provide “some evidence tending to show the existence” of both elements of a selective prosecution claim: that the prosecutorial policy had a “discriminatory effect” and a “discriminatory intent.”⁶ Id. (citation omitted). Brock’s motion provides evidence of neither.

Brock focuses primarily on the Portland protesters, arguing that they are “similarly situated” to January 6th defendants such as himself. Selective Prosecution Mot. at 3–5. They are not. As other courts have found, the mob on January 6th—of which the government alleges Brock was a part—“endangered hundreds of federal officials in the Capitol complex,” including Members of Congress and their staffs, Vice President Pence, and the United States Capitol Police. E.g., Judd, 2021 WL 6134590, at *5. In contrast, the Portland protests happened at night, when no federal employees were in the buildings to be endangered. See Aff. in Supp. of Criminal Compl. ¶¶ 5–6, United States v. Bouchard, No. 3:20-mj-165 (D. Ore. July 24, 2020), ECF No. 1-1 (describing “nightly criminal activity” and an altercation that began at “approximately 01:35 a.m.”). The decision to file and pursue more serious charges based on the threat to government officials and employees is certainly a legitimate prosecutorial consideration. Other factors, such as the alleged purpose of the January 6th defendants’ actions—obstructing the certification of the Electoral College vote—would also justify differences in prosecutorial behavior. See United States v. Rhodes, Crim. No. 22-cr-15 (APM), 2022 WL 3042200, at *5 (D.D.C. Aug. 2, 2022) (concluding that Portland protestors were not alleged to have “engaged in comparable conduct” since defendant did not identify an “official proceeding” they obstructed).

⁶ Brock asks the Court to order discovery under Brady v. Maryland. Selective Prosecution Mot. at 2–3. The Court disagrees that selective prosecution evidence is discoverable under Brady, as it is irrelevant to Brock’s guilt or punishment. See United States v. Blackley, 986 F. Supp. 600, 602 (D.D.C. 1997) (“Brady/Giglio production is only required when the materials are being sought to prove defendant free from blame, and not when the defense seeks to obtain a collateral dismissal,” such as a selective prosecution claim.). Allowing selective prosecution evidence is contrary to the plain meaning of Brady, which is limited to evidence “material either to guilt or to punishment.” 373 U.S. at 87. It would also undermine the rigorous standard for discovery set by Armstrong, which was animated by concerns that an easily surmountable discovery standard would “divert prosecutors’ resources” and “disclose the Government’s prosecutorial strategy.” 517 U.S. at 468.

Brock argues that his case is comparable to Portland protestors as he is “not alleged to have engaged in violence or property destruction.” Selective Prosecution Mot. at 5. That argument assumes that the level of actual violence and property destruction is the only difference between the Portland protestors and January 6th defendants, which is not the case. As part of the mob that stormed the Capitol, Brock is alleged to have taken part in the events of January 6th that caused “[m]embers of Congress [to] cower[] under chairs while staffers blockaded themselves in offices, fearing physical attacks from the rioters.” Judd, 2021 WL 6134590, at *5. The government alleges Brock was “on the Senate floor”—the very floor from which Members of Congress had fled—“holding flex cuffs in his right hand.” Opp’n to Selective Prosecution Mot. at 2. Those allegations alone would be a legitimate factor on which to base more serious charging decisions.

The comparisons to protests connected to Justice Kavanaugh’s Supreme Court confirmation, see Selective Prosecution Mot. at 5–6, and the 2019 sit-in at Immigration and Customs Enforcement headquarters, id., fail for the same reasons—Brock does not describe any similarly situated defendants given the difference in violence, threat to citizen safety, and scope.

Brock’s arguments as to discriminatory intent fare no better. He concludes—with no proof or argument—that the motive behind the claimed discrepancies in charging is a “bias in DOJ leadership in favor of liberal causes.” Selective Prosecution Mot. at 5. A conclusory statement like this is not “evidence” of anything; at best, it is a “personal conclusion[] based on anecdotal evidence,” which is insufficient to form a colorable claim of discriminatory purpose. Armstrong, 517 U.S. at 468, 470. Further, Brock’s assertion runs counter to the facts. Initial prosecution decisions in both the Portland cases and the January 6th cases, including charging January 6th protestors and dismissing cases against Portland protestors, were made under Republican

leadership. See Judd, 2021 WL 6134590, at *6 n.9.⁷ Brock has not offered any evidence suggesting the January 6th prosecution decisions were made with discriminatory effect or discriminatory intent, and his motion for discovery into selective prosecution will be denied.

Conclusion

For the foregoing reasons, the Court will deny each of Brock's motions. A separate Order consistent with this opinion will issue.

/s/
JOHN D. BATES
United States District Judge

Dated: August 31, 2022

⁷ For Brock specifically, the case against him was commenced in early January 2021, when Acting Attorney General Jeffrey Rosen, appointed by President Donald Trump, was still the leader of the Department of Justice. See Compl. [ECF No. 1] at 8 (filed January 9, 2021).

VOLUME I
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
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UNITED STATES OF AMERICA

vs. 21-CR-140

LARRY RENDALL BROCK,

Defendant.

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Transcript of a Bench Trial held on
November 14, 2022, at the E. Barrett Prettyman U.S.
Courthouse, 333 Constitution Avenue, N.W.,
Washington, D.C., the HONORABLE JOHN D. BATES,
Senior Judge, Presiding.

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I N D E X O F T E S T I M O N Y

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Elizabeth Glavey	28	47	--	--
Sean Patton	53	124	--	--
Nairobi Timberlake	147	169	--	--
Maggie-May Humphrey	173	185	186	--
John Moore	187	--	--	--

JODI L. HIBBARD, RPR, CRR, CSR
(315) 234-8547

1 (Open Court, 9:35 a.m.)

2 THE CLERK: Your Honor, we have Criminal Action
3 21-140, United States of America versus Larry Brock. We have
4 Ms. April Ayers-Perez and Mr. Douglas Meisel representing the
5 Government and Mr. Charles Burnham representing Mr. Brock and
6 all parties are appearing in person.

7 THE COURT: All right, good morning to everyone.
8 We're ready to go with trial in this matter. I appreciate
9 the trial brief from the Government, the exhibit lists from
10 both sides, and the witness list from the Government. And I
11 see I have an exhibit book here from each side and I
12 appreciate those as well. And my first question is whether
13 there are any questions before we commence. Anything that we
14 need to discuss before we get going, Mr. Burnham?

15 MR. BURNHAM: I have a few preliminary issues.

16 THE COURT: Okay. For the court reporter, it's
17 usually easier if you use the lectern microphone.

18 MR. DISNEY: Your Honor, before we get started, my
19 name is Barry Disney and I also appear for the Government.

20 THE COURT: Good morning.

21 MR. BURNHAM: Your Honor, the first preliminary
22 issue is very brief. The Court had requested a written
23 waiver of trial by jury, I've prepared one that has
24 everybody's signatures except for your Honor's so if I can
25 approach, I'll hand it up to Mr. Bradley.

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1 THE COURT: Please hand it up to Mr. Bradley.

2 THE CLERK: Thank you. All right. And this is a
3 written waiver of trial by jury, it's with the consent of the
4 United States, and by this document, the defendant is waiving
5 his right to a jury trial as is required under the Federal
6 Rules and I will approve and sign that. Thank you,
7 Mr. Burnham.

8 MR. BURNHAM: Thank you, your Honor.

9 THE COURT: Go right ahead.

10 MR. BURNHAM: The second issue is, there's an
11 evidentiary issue involving some Facebook records that, based
12 on trial preparation, is likely to come up repeatedly, but I
13 think it's, it admits of consideration in a summary fashion,
14 so I thought it was appropriate to raise it now. I've
15 discussed this with the Government, they know what it is.
16 I'll summarize it as follows.

17 THE COURT: Okay.

18 MR. BURNHAM: The Government intends to introduce
19 in their case in chief a considerable number of Facebook
20 messages that were seized from Mr. Brock's personal cell
21 phone. Some of those messages, we have no objection to, and
22 I've advised the Government as to which particular ones those
23 are, but to summarize, our position is that if a Facebook
24 message is either on January 6th itself or close to it, or
25 even if it was a few weeks ahead of time, if it specifically

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1 refers to January 6th or to the Electoral College, it's
2 admissible and that's -- there's a number that fall in that
3 category, we won't be objecting to. However, there's a
4 considerable number that are both weeks ahead of January 6th
5 and don't specifically refer to the Electoral College itself
6 or to the associated demonstration but rather to just general
7 political discussion about the election. And there's, you
8 know, there's some heated rhetoric about, oh, the country is
9 being taken over, they're coming for our guns, isn't this
10 terrible. And our objection to those is really on relevance
11 and 403 grounds, that they don't really speak to any question
12 presented to your Honor. And I realize this is a bench
13 trial, but even so, it's highly prejudicial to Mr. Brock, and
14 it -- I think it gives the appearance that he's on trial for
15 having wrong political opinions if evidence comes in that is
16 just about the election, or about Joe Biden, or about, you
17 know, it's going to be 1776 all over again, it's -- and
18 there's really not much of a tie-in to much of that material
19 to any of the actual evidence. So that would be our -- that
20 would be our objection. We can get into individual ones now
21 or I could just sort of front the issue so --

22 THE COURT: Well, I think it's good that you've
23 identified the issue, and it is a 403 issue as you explain
24 it, 403 issue really is going to depend on the specifics of
25 the Facebook entry, because I can't assess the prejudice

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1 really without looking at the particular exhibit. So
2 probably, given that it's a bench trial, I can wait until the
3 time of introduction of the particular exhibit and hear, if
4 necessary, from each side, at least the first time, to get
5 your full positions in line, and then make that assessment
6 under 403 whenever that objection is made.

7 So I would say that the best way to do it is, the
8 first time you have an objection, make the objection, I'll
9 hear from both sides, we don't have a jury that we have to
10 remove, it's not going to waste much time, and make the
11 ruling on that one. And then for successive ones that you
12 have objections to, I can assess the prejudice based on the
13 particular exhibit.

14 MR. BURNHAM: I appreciate that, your Honor, I'll
15 proceed that way. The only remaining issue is, and I haven't
16 discussed this particular piece of it with the Government so
17 I don't know, is I don't know how particularly prominent
18 those messages were going to be in opening statements. I
19 know this is a bench trial but if they were the centerpiece,
20 you know, we would invite direction from the Court that
21 perhaps that material ought not to be proffered to the judge
22 before you've had a chance to rule on it. But that's the
23 only question.

24 THE COURT: I guess I have to ask the Government
25 with respect -- I would assume it's not going to be central

1 to your opening?

2 MR. BURNHAM: No, your Honor.

3 THE COURT: I have to ask the Government whether it
4 intends to rely on those specific Facebook entry exhibits in
5 its opening. And if so, then maybe I will have to deal with
6 that at least in part now, although, again, we don't have a
7 jury. So if an opening refers to something that doesn't line
8 up in evidence, I could sort that out.

9 MR. BURNHAM: And we are absolutely confident your
10 Honor can.

11 THE COURT: Let me hear from --

12 MR. BURNHAM: Thank you.

13 THE COURT: -- from the Government just to have at
14 least clearly in mind what, if any, issue there may be with
15 respect to the openings, Ms. Ayers-Perez.

16 MS. AYERS-PEREZ: Yes, your Honor. There's only
17 one message that is planned to be used during the opening, it
18 is one that Mr. Burnham plans to object to or he's
19 represented he plans to object to. I don't know if you want
20 to go over the specifics of the message now.

21 THE COURT: Well, maybe we can do that message now
22 as sort of setting the table for all of the messages.

23 MS. AYERS-PEREZ: Okay.

24 THE COURT: All right. Are you going to display
25 the message or how do you want to do it?

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1 MS. AYERS-PEREZ: We can display the message if --
2 9N.

3 THE CLERK: Are you using your laptop?

4 THE COURT: It's coming up. Give me a second and
5 I'll read it. Is it just the one page?

6 MS. AYERS-PEREZ: It's two pages, the second page
7 will pop up if you let me know when you're done, we'll --

8 THE COURT: I'll let you know when the second page
9 should pop up. Do you have any problem with me reading it,
10 Mr. Burnham?

11 MR. BURNHAM: No, your Honor, the Court has to read
12 it.

13 (The Court reviews the document.)

14 THE COURT: Okay, second page.

15 (The Court reviews the document.)

16 THE COURT: All right. You can go back to the
17 first page while you make your argument.

18 MS. AYERS-PEREZ: Yes, your Honor.

19 THE COURT: Well, I guess I'll hear, hear the
20 objection first. So Mr. Burnham, if you have more to say
21 with respect to supporting your objection.

22 MR. BURNHAM: Well, I'll address that, your Honor,
23 I think this is a perfect example of the kind of thing we're
24 objecting to. First of all, it's from Christmas Eve so well
25 in advance of January 6th.

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1 THE COURT: Two weeks.

2 MR. BURNHAM: That's right, and secondly, by its
3 own terms, it doesn't refer to January 6 itself, it starts,
4 "If Congress fails to act on January 6th," then all these
5 crazy things are going to happen. And I'll proffer to the
6 Government that there's not going to be -- proffer to the
7 Court there's not going to be any evidence to lay a
8 foundation that there was seizing of Democratic politicians
9 or, you know, seizing media assets, that's not going to be
10 supported by the evidence at all. So really the two problems
11 are, by its own terms this does not refer to January 6, it
12 refers to some other time; and secondly, it doesn't tie in to
13 any particular evidence that the Government can proffer, I'm
14 confident, that the Court is going to hear. And the
15 prejudice, I mean people talking on Facebook, they're
16 friends, military buddies, and it's the prejudice even in a
17 bench trial is, outweighs whatever relevance this
18 communication has. So this is a good example of the type of
19 objections I'll be raising to your Honor. There's going to
20 be communications that refer to January 6th I'm not going to
21 object to at all, not trying to keep out relevant evidence.
22 Thank you.

23 THE COURT: Thank you, Mr. Burnham.
24 Ms. Ayers-Perez.

25 MS. AYERS-PEREZ: Yes, your Honor. This post

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1 actually specifically refers to January 6th in the beginning.

2 THE COURT: Well, it doesn't refer to the events of
3 January 6th, it refers to Congress failing to act on
4 January 6th, but you're right, there is a reference to that
5 date.

6 MS. AYERS-PEREZ: Right, and this goes to the
7 defendant's intent, especially for Count One, the 1512, the
8 obstruction of the official proceeding, the intent aspect of
9 that is that he was intending to obstruct the official
10 proceeding which is counting the Electoral College votes,
11 which is a direct result of the 2020 election on
12 November 3rd. And this is his plan, his action if that
13 doesn't happen, if Congress doesn't act on January 6th. It
14 goes to his intent, his knowledge as to what's actually
15 happening on January 6th, about Congress' role in
16 January 6th, and his thought process as to where -- I mean
17 this is only two weeks before January 6th, and his thought
18 process of what will happen if Congress doesn't act on
19 January 6th. And then of course we have the evidence that I
20 believe will come in, your Honor, of him actually being at
21 Congress on the Senate floor on January 6th. I think it's
22 directly relevant, I don't think it's more prejudicial than
23 probative. I think it's more probative because it goes into
24 his state of mind, into his intent which is really one of the
25 main reasons that we're here, that we're fighting about the

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1 intent for Count One, that objection of the official
2 proceeding, your Honor, and that official proceeding is
3 what's happening in Congress on January 6th that he's
4 referencing, and is the catalyst for this entire message and
5 these tasks and these rules of engagement.

6 THE COURT: All right. I have three observations.
7 First observation is that it's a little hard to make a
8 definitive assessment of the, of how relevant this document
9 is, and how important, because I don't know what the other
10 evidence is, and I don't know whether this, in terms of its
11 relevance, is just cumulative of other evidence that will be
12 presented, which it may be, but I would say that the
13 relevance on a 402 assessment is maybe not all that strong,
14 but it seems to me that it is at least marginally relevant,
15 and so we do get to a 403 assessment because otherwise I
16 would believe it's admissible. If we had a jury here, I
17 might reach a different conclusion with respect to the
18 prejudice, but I think with a bench trial, the prejudice can
19 be taken care of by my assessing it and giving it the weight
20 that it warrants, and understanding that sometimes things are
21 said not at the time of the January 6th events, but earlier
22 on that may be a little extreme. I would say that some of
23 the things in this Facebook communication are pretty extreme,
24 but I think I can sort through that prejudice assessment
25 under 403.

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1 So my -- I don't want to make a definitive ruling,
2 because maybe something will change between now and the
3 actual introduction of this document, but if nothing does
4 change, I would be inclined to overrule the objection and
5 allow this document to be admitted, understanding with a 403
6 prejudice assessment I will be looking closely at just how
7 relevant it is and limiting my consideration of it to its
8 relevance, not to other things.

9 MS. AYERS-PEREZ: Yes, your Honor.

10 THE COURT: All right. So you can refer to it in
11 your opening if you so desire. With that, other things, did
12 you have anything else, Mr. Burnham?

13 MR. BURNHAM: No, your Honor, thank you.

14 THE COURT: And for the Government, anything?

15 MS. AYERS-PEREZ: Yes, your Honor, we have a number
16 of stipulations that we have agreed to, and I have copies for
17 you. I know typically in a jury trial, I or the witness
18 would read it into the record, I'm not sure how you want us
19 to handle that here in the bench trial.

20 THE COURT: Does it make sense to do it at the
21 outset or does it make sense to do some of them at different
22 places in the trial if you're trying to keep me just on track
23 in terms of following what's going on?

24 MS. AYERS-PEREZ: Yes, your Honor, I think we could
25 do some of them at the outset and then others can be done at

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1 various points during the trial.

2 THE COURT: And none of them are very long?

3 MS. AYERS-PEREZ: A couple of them are, one of them
4 is pretty lengthy. The rest of them --

5 THE COURT: What's pretty lengthy mean?

6 MS. AYERS-PEREZ: Four pages.

7 THE COURT: Maybe you ought to give me that one so
8 I can read it, so you don't have to read it into the record,
9 but if there's a desire by either side to read anything so
10 it's in the record and in my mind from your reading it, I
11 will allow you to do that. But for the lengthier ones, I
12 don't think that's necessary, just make sure that you refer
13 to it at the appropriate time and I'll tell you that I have
14 read it or take the time then to read it.

15 MS. AYERS-PEREZ: Yes, your Honor, thank you.

16 THE COURT: So are you going to give that whole set
17 or are you going to do it step by step as we come to them?

18 MS. AYERS-PEREZ: I can give you the whole set,
19 these are the ones that are the originals signed by myself
20 and Mr. Burnham and then we have of course copies that we can
21 read from.

22 THE COURT: Why don't you give me the whole set and
23 that way I can read in advance what's necessary to read in
24 advance, and have at the moment what I need when you refer to
25 them. Thank you.

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1 MS. AYERS-PEREZ: Thank you, your Honor.

2 THE COURT: Now, these are, Mr. Bradley, all marked
3 as exhibits, so they will all be exhibits that will be
4 introduced as we get to them during the course of the trial.
5 All right. Anything else, Ms. Ayers-Perez?

6 MS. AYERS-PEREZ: No other preliminary matters,
7 your Honor, thank you.

8 THE COURT: All right. So with that, then we're
9 ready to proceed with opening statements by each side, and
10 then the evidence in the case. How long does the Government
11 think its opening will be?

12 MR. MEISEL: Fifteen to twenty minutes, your Honor.

13 THE COURT: And the defense?

14 MR. BURNHAM: I think I can do mine in 10, your
15 Honor.

16 THE COURT: All right. Well, let's start with the
17 Government. Please go ahead, Mr. Meisel.

18 MR. MEISEL: May it please the Court, good morning,
19 your Honor. Judge, what you're about to see is a short
20 visual presentation of what you'll see in this case. At the
21 close of the government's case, the only thing the Court will
22 need to decide is whether the defendant Larry Brock had
23 corrupt intent to obstruct an official proceeding to satisfy
24 Title 18 U.S. Code 1512. It's the government's position the
25 evidence is sufficient that he was a "but for" cause for why

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1 the Senate was obstructed from performing its constitutional
2 duty under the 12th Amendment on January 6, 2021. This is a
3 snapshot or a roadmap that you need to decide this case.

4 Larry Brock is a veteran of the Air Force, which he
5 proudly displayed with his unit patch. He celebrated
6 Christmas of 2020 by buying, by purchasing body armor and a
7 helmet or personal protective equipment in preparation for
8 what he considered an oncoming civil war. He took an oath to
9 support and defend the Constitution from enemies foreign and
10 domestic, and on January 6, 2021, Larry Brock betrayed that
11 oath. He betrayed his country and participated in mob
12 violence whose objective it was to disrupt the certification
13 proceedings for the 2020 Presidential election and prevent
14 the peaceful transition of power. Brock was among a small
15 group that penetrated deep into the heart of the U.S.
16 Capitol, entering one of the most sensitive areas where the
17 Senate was convened to certify the election, the Senate
18 Chamber.

19 As early as November 2020 he contemplated an
20 assault on the U.S. Capitol. He was preparing for that
21 assault as if it was a military operation, and viewing it
22 through the lens of a highly-trained tactically proficient
23 military officer.

24 I'm not going to -- the Court has already had an
25 opportunity to review this Facebook post, but this is one of

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1 the most significant posts, within two weeks of the
2 January 6, 2021 event. It reads like a military operations
3 order listing out assumptions that the U.S. military is not
4 going to be involved, seizing all Democratic politicians,
5 interrogating them using similar techniques that were used on
6 Al Qaeda, seizing national media assets. Letting Democratic
7 cities burn, establishing provisional governments in
8 rebellious states, ceasing foreign aid except for key allies
9 as determined by President Trump. And then rules of
10 engagement, do not kill law enforcement officers unless
11 necessary. Gas would assist in this if we can get it.

12 Now in the video you're about to see you'll see the
13 defendant on the floor of the Senate. You'll hear him tell a
14 fellow rioter to get out of the Vice President's chair. And
15 if nothing else, it demonstrates that Brock, Larry Brock,
16 better than anyone else, understood the significance and the
17 value of the ground that they had just seized and its
18 importance to the disrupted certification proceedings.

19 (Video played.)

20 MR. MEISEL: Now the key issue in this case is
21 corrupt intent. The evidence will show that Mr. Brock was
22 prepared for civil war. He purchased body armor and a helmet
23 just before January 6, he anticipated violence and he came
24 prepared for violence. He traveled from his home in Texas to
25 D.C. and he wore that equipment on January 6. He witnessed

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1 violence and destruction and kept moving, maneuvering freely
2 and extensively throughout the Capitol Building. He picked
3 up and retained flex cuffs. Twenty minutes after the
4 evacuation of the Vice President, Mr. Brock was at the same
5 door with a set of keys trying to access the Senate Chamber.
6 He entered one of the most sensitive spaces, the Senate
7 Chamber, where minutes earlier the Senate was convened with
8 the Vice President presiding to take up objections to the
9 Electoral College vote. He remained on the Senate floor for
10 approximately seven minutes. His escalating rhetoric on
11 social media demonstrates that he firmly and erroneously
12 believed that Trump was the rightful winner of the 2020
13 election and that offensive action was required to unwind the
14 election results and that he was doing his patriotic duty to
15 prevent the certification and the transition of power.

16 The evidence will provide a nearly uninterrupted
17 timeline of the defendant's movements starting at the Stop
18 the Steal Rally. To his walk east down Constitution Avenue
19 toward the U.S. Capitol, and as the mob's protesters with
20 numerical overmatch tossed aside barricades and overwhelmed
21 Capitol Police defensive lines, Brock moved with the mob
22 formed on the West Front. He ascended the West Plaza stairs
23 to the Upper West Terrace. He moved with the crowd through
24 the breach at the Senate Wing Doors at 2:24 p.m., and then
25 moved south with the crowd through the memorial doors at

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1 2:32 p.m. and ascending the memorial stairs to the second
2 floor.

3 So here's the Senate Wing Doors, and how it
4 appeared as Brock would have seen it at approximately
5 2:24 p.m. Here is Mr. Brock entering the Senate Wing Doors
6 at 2:24 p.m.

7 After crossing through the memorial doors, he
8 ascends the second floor, he ends up in a location between
9 the Statuary Hall and the Rotunda, goes into the Rotunda
10 briefly, and then into the Rotunda door interior. He's in
11 this area roughly from 2:35 to 2:39 p.m. before ascending the
12 Gallery stairs to the third floor. Now it's during this
13 eight-minute window from entry to the memorial doors to the
14 Rotunda that Vice President Pence and his family are removed
15 from the Senate Chamber, the East Front is breached, staffers
16 throughout the building are barricaded and sheltering in
17 place, Capitol Police have established barricades in the
18 House Chamber with lawmakers sheltered in place. And at
19 2:30 p.m., the Senate evacuation is well underway.

20 So on the third floor, these are additional images
21 of Brock as he -- of Mr. Brock as he moved from the Rotunda
22 to the Rotunda door interior, and this is an image of him
23 ascending the Gallery stairs toward the third floor. So at
24 the third floor, he arrives at approximately 2:40 p.m. in the
25 east corridor, proceeds north to the Senate Gallery, and

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1 enters the Senate Chamber balcony at approximately 2:42 p.m.

2 These photos depict Mr. Brock's movements through
3 the east corridor, through the Senate Gallery, the balcony of
4 the Senate Chamber. And then at 2:47 p.m., Mr. Brock is seen
5 outside the Senate Chamber attempting to access the same door
6 that the Vice President had been removed by Secret Service no
7 less than 20 minutes earlier.

8 THE COURT: Looked like exactly 21 minutes earlier.

9 MR. MEISEL: Yes, your Honor. This is video of the
10 Vice President being removed from the chamber through the
11 very same door that Mr. Brock was attempting to gain access.
12 So at this point, Mr. Brock and a group of rioters maneuvered
13 down to the second floor. Ultimately, Mr. Brock is able to
14 access the Senate Chamber from approximately 2:48 p.m. to
15 2:55 p.m. And after leaving the Senate Chamber, he maneuvers
16 down the west stairs and exits the Parliamentary doors at
17 3:01 p.m.

18 And Judge, at the conclusion of the government's
19 case, after reviewing the government's evidence and the
20 escalating and violent rhetoric on social media and receiving
21 other evidence, physical evidence, my colleagues and I will
22 ask that you find that we've met our burden and we'll ask you
23 to find the defendant guilty of obstructing the official
24 proceeding and each of the lesser charges. Thank you.

25 THE COURT: All right, thank you, Mr. Meisel.

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1 Mr. Burnham.

2 MR. BURNHAM: Thank you, your Honor. Morning
3 again, your Honor. Your Honor, I'll start by observing that
4 I agree with the Government to the extent that intent is
5 going to be a central issue in this case. There's going to
6 be other issues as well, other things we're contesting that
7 we'll get into probably more so at closing, but we maintain
8 absolutely when the evidence is viewed as a whole, there's no
9 evidence of criminal intent here. In fact, quite the
10 opposite.

11 So what's the Court going to learn? I'll start
12 with Mr. Brock himself. As the Government alluded to, the
13 Court will hear that he is a veteran, long-time veteran of
14 the Air Force with combat experience flying the A10 and other
15 military aircraft. There's not going to be any evidence that
16 he has a history of political activity at all, let alone any
17 kind of rabble rousing. There's not going to be evidence
18 that he had even tangential connections to any organized
19 group, whether it be a suspect group or indeed any group.
20 The evidence is simply going to be that Mr. Brock was a
21 supporter of the former President, and an assiduous follower
22 of the news who, based on the things that he had read and
23 heard, developed concerns with the 2020 election, fraud,
24 illegality and so forth, and decided for that reason to
25 travel to D.C. on January 6 to support, along with thousands

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1 of other people, to participate in that First Amendment
2 demonstration in support of the former President. Mr. Brock
3 traveled to Washington, D.C. by himself, no one was with him,
4 there's not going to be any evidence that he was coordinating
5 with anyone he was going to meet there, I mean he was by
6 himself, there to support the President and support
7 Democracy.

8 He was present there at the speech at the Ellipse
9 where the President spoke. There's already been alluded to
10 his attire. I think the government's witnesses will probably
11 admit that throughout 2020 and particularly at two pro-Trump
12 protests in December, there had been counter-protesters that
13 engaged with the Trump supporters and there was instances
14 that reported in the news of throwing batteries, throwing
15 frozen water bottles, bricks, and that some of the Trump
16 supporters sustained injury and so the evidence is going to
17 be that not just Mr. Brock by a long shot but many, many
18 people, you've seen some of them already in the videos, wore
19 personal protective equipment of many kinds, vests, helmets,
20 bike helmets, motorcycle helmets, and Mr. Brock had that as
21 well, his helmet and he had on his vest. So that was his
22 attire. So he was there for the speech at the Ellipse and he
23 would have heard the President say, let's go to the Capitol.
24 And then, along with hundreds of thousands of other people,
25 there was the walk there down from the Ellipse down

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1 Constitution Avenue to the Capitol itself.

2 And so then the important evidence that the Court
3 is going to hear at that point is Mr. Brock was not anywhere
4 towards the front of that group. He wasn't the first wave as
5 it's sometimes been referred to. On the contrary. And those
6 were the people that there might be some evidence that were
7 fighting with police, you know, having standoffs, breaking
8 windows. It's going to be none of that with respect to him.
9 The evidence, we're confident, is going to be that by the
10 time Mr. Brock approached the west facade of the Capitol, any
11 semblance of a barricade, this gets to the restricted area
12 issue, was removed outside of his presence. The bike racks
13 were gone, the standoff with police were done, and at that
14 point any police in the area were literally standing aside,
15 the evidence is going to show that. It's not just that they
16 weren't physically engaging the protesters, they were off to
17 the side making no effort whatsoever to interfere with the
18 movement of the crowd. And that's not even a verbal effort,
19 there's not going to be evidence that there was say police on
20 loudspeakers saying, disperse, this is an unlawful entry,
21 assembly, disperse, there's not going to be any of that.

22 And then your Honor already saw that at the point
23 where Mr. Brock is on film entering the door to the building
24 itself, there's no police there, it's almost an orderly
25 procession into the Capitol. There's nobody there putting

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1 him on notice that entry there was prohibited. And this is,
2 the backdrop to this is the evidence will show this is the
3 U.S. Capitol in the 9/11 era so to speak and the evidence, we
4 submit, is such that a reasonable person could conclude that
5 the persons lawfully in charge of the Capitol made a decision
6 that entry was going to be allowed. All the evidence
7 tends -- I don't want to get into arguments in opening
8 statement but that's what I think the evidence will show.

9 The evidence will also show one of the cruel twists
10 of fate in this case, a tragic aspect of it is that right,
11 you know, if Mr. Brock had approached just a few minutes
12 before he did, there would have been protesters there
13 breaking windows and kicking the door and I think the
14 evidence is going to be clear that had Mr. Brock approached
15 at that point, he wouldn't have engaged in any of that. I'll
16 get to why I say that in just a moment.

17 The other cruel fact about this case is the
18 evidence is going to show if he had approached that door just
19 a few minutes later, there would have been a police standoff
20 where police had secured the door and they had shields trying
21 to keep people out. The evidence is going to be very clear
22 that had Mr. Brock approached just a few minutes later and
23 been presented with that scene, he would have turned around
24 and left. I think the Court's going to have no trouble
25 concluding that. The fact that he approached just, just when

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1 he did, in the middle of the group is the tragic circumstance
2 that led to this unfortunate case.

3 And I think those observations are only going to be
4 reinforced by Mr. Brock's actions in the Capitol, some of
5 which we've seen already. Your Honor heard Mr. Brock
6 admonishing the other demonstrator to get out of the Vice
7 President's chair and telling him and the others, we have to
8 be respectful, that's not our chair. And that's not the only
9 example of that that the Court's going to hear today is of
10 Mr. Brock behaving in that way. Your Honor probably, could
11 have already observed from the courtroom and from the videos
12 that Mr. Brock is a man of considerable physical stature. He
13 was in his 50s, is in his 50s, was in his 50s in 2021 which
14 puts him older than probably most of the people that were
15 there that day, certainly not all. And his long career in
16 the military, you'll see this, has given him a certain
17 ability to issue commands in an authoritative way, he has
18 that training. And the evidence is all going to show that he
19 used those personal characteristics to exert a moderating
20 influence on anybody that was in his sphere. If anyone was
21 getting out of hand, behaving disrespectfully, he admonished
22 those people not to do that, which is the very opposite of
23 the intent to obstruct government business, to obstruct
24 Congress, to break the law, to behave wrongfully. It's
25 completely inconsistent with that. I'm straying into

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1 argument, I'll save further elaboration on that to closing.

2 Finally, though, there's going to be evidence that
3 Mr. Brock left the Capitol voluntarily under the supervision
4 of law enforcement well before the actual clearing out of
5 everybody began, and before the President's, you know, famous
6 tweet about, we love you, you're very special but you have to
7 leave, that all came later. He voluntarily, after he had
8 walked around, been here and there, as your Honor saw, he
9 left voluntarily. And even on his way out the door, when
10 another individual was -- there's a video of this, too,
11 getting a little out of hand and being a little
12 confrontational with officers, on his way out the door you
13 can see Mr. Brock patting this gentleman on the shoulder,
14 telling him calm down, escorting him out (indicating). For
15 the record I'm making the motions that go along with that
16 description, that's, even on his way out the door, he was
17 behaving in that way.

18 And so the government's case, and we've heard this
19 already, is focusing on small parts of the record, I would
20 submit, look at this terrible Facebook message, look at this
21 30-second snippet of video, why is he opening that door,
22 isn't that nefarious? But we submit when the evidence is
23 considered as a whole, it's a clear-cut case for complete
24 lack of criminal intent. The Facebook messages, to the
25 extent they're admitted, are absurdly overheated and absurdly

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1 inconsistent with the actual evidence of how Mr. Brock
2 behaved that day, who he was and what his actions were
3 intended to accomplish.

4 We submit at the conclusion of the evidence, the
5 Court will have no trouble concluding that Mr. Brock did not
6 have criminal intent and was instead, disagree with him
7 though the Court and other reasonable people might, was doing
8 his best to act in accordance with the best traditions of
9 citizenship, patriotism, and love of country to which he's
10 lived his whole life up to this point. Thank you.

11 THE COURT: Thank you, Mr. Burnham. All right. I
12 appreciate the opening statements of counsel, and now let's
13 hear and see the evidence in the case. Government may begin
14 to present witnesses and exhibits.

15 MR. DISNEY: Thank you, your Honor. Your Honor,
16 you do have a stipulation, it's Exhibit 702 and it's
17 regarding the stipulation of the Electoral College.

18 THE COURT: And that's a lengthy stipulation?

19 MR. DISNEY: It is a lengthy stipulation and we
20 don't have to go through it at this point, but basically, it
21 lays out that the Electoral College was going on, the
22 counting, certification of Electoral College was going on,
23 that it was interrupted and it lays out the times that it was
24 interrupted.

25 THE COURT: You can give me just a second. I mean,

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1 I'm familiar with this information generally, just a second.
2 Sometimes these exhibits are not all clipped together. I
3 seem to have --

4 MR. DISNEY: It was in the 702, the stipulations
5 that were just handed to you.

6 THE COURT: Just a second. I need to just make
7 sure I have everything straight here. Does it have 18
8 paragraphs in total? Fourth page would be the 18th
9 paragraph?

10 MR. DISNEY: Yes, your Honor.

11 THE COURT: All right, I've got it.

12 (The Court reviews Exhibit No. 702.)

13 THE COURT: All right, I've reviewed it.

14 MR. DISNEY: We just wanted to have that background
15 for the Court before we call our first witness which will be
16 Elizabeth Glavey.

17 THE COURT: All right.

18 THE CLERK: Good morning, ma'am.

19 THE WITNESS: Good morning, sir.

20 THE CLERK: Please raise your right hand.

21

22 E L I Z A B E T H G L A V E Y , called
23 as a witness and being duly sworn, testifies as
24 follows:

25 THE COURT: Good morning, Ms. Glavey.

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1 THE WITNESS: Good morning, sir.

2 MR. DISNEY: Your Honor, with permission of defense
3 counsel, I would move to admit State's Exhibits -- I'm sorry,
4 Government Exhibits 205, 206, 207, 208, and 209. That's 205
5 through 209.

6 THE COURT: Without objection?

7 MR. BURNHAM: Yes, your Honor.

8 THE COURT: All right. So Government's 205, 206,
9 207, 208, and 209 are admitted, and by the way, Government's
10 70 -- well, I'm sorry, Exhibit 702, a stipulation, is
11 admitted as well.

12 MR. DISNEY: And then two more exhibits are
13 Government's Exhibits 402 and 403.

14 THE COURT: Without objection, Mr. Burnham?

15 MR. BURNHAM: Yes, your Honor.

16 THE COURT: 402 and 403 are admitted.

17 MR. BURNHAM: Yes, your Honor, no objection.

18 DIRECT EXAMINATION BY MR. DISNEY:

19 Q Ma'am, would you tell us your name?

20 A Elizabeth Glavey.

21 Q And where are you employed?

22 A The Secret Service.

23 Q How long have you been with the Secret Service?

24 A Thirteen years.

25 Q And what is the mission of the United States Secret

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1 Service?

2 A It's a dual mission with protection and investigations.

3 Q Thank you. And what is the current position you hold
4 with the Secret Service today?

5 A I'm an instructor at the Secret Service training
6 academy.

7 Q And back on January 6 of 2021, what position did you
8 hold?

9 A I was an agent on the Vice President's detail.

10 Q And who was the Vice President at that time?

11 A Michael Pence.

12 Q And how long had you been on that detail?

13 A At that time, three years.

14 Q And what was your responsibilities on the Vice
15 President's detail?

16 A To protect the Vice President and his family and to do
17 security advances.

18 Q When you say to do security advances, what are you
19 talking about?

20 A When the Vice President would travel, we would send out
21 a team to that location and we would conduct a security plan
22 for the venues that the Vice President would visit.

23 Q In protecting the Vice President, is it important to
24 have a perimeter established?

25 A A security perimeter, yes.

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1 Q And what purpose does that serve?

2 A It provides a barrier for where the general public can
3 come in, get screened and enter our facility.

4 Q And when you say get screened, what do you mean by
5 that?

6 A To check the individuals for any kind of weapons that
7 could harm the Vice President or his family.

8 Q And do you feel like that that is an important, the
9 screening is important in protecting the Vice President?

10 A Yes.

11 Q Thank you. Now going back to January 6th, 2021, we
12 have this stipulation of the Electoral College, but it's my
13 understanding that Vice President Pence was slated to go to
14 Congress on that day?

15 A That's correct.

16 Q And what was your assignment on that particular day?

17 A I was the site agent that day.

18 Q And what does that mean?

19 A I was responsible for taking the Vice President
20 anywhere he needed to go throughout the Capitol that day, I
21 was the point of contact.

22 Q Prior to January 6th, 2021, did you and your colleagues
23 work out a plan about the Vice President's visit?

24 A Yes.

25 Q And is there a name for the, basically the sheet that

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1 you used to develop this plan?

2 A Yes, with my liaison counterpart, we completed the head
3 of state notification for the Capitol.

4 Q Okay. And what is, if you can just tell me what is a
5 head of state notification worksheet?

6 A It notifies the Capitol who would be visiting, in this
7 sense Vice President Pence and Mrs. Pence and the daughter
8 would be attending the Capitol that day and who the point of
9 contacts were for the Vice President's detail, as well as his
10 itinerary for the day.

11 Q And if we could pull up Government's 206, please. And
12 do you see the document that's on the screen?

13 A I do.

14 Q Is that the head of state worksheet that you talked
15 about?

16 A Yes, that's correct.

17 Q This is -- is this basically the plan for the Vice
18 President's visit?

19 A Yes.

20 Q Who all is involved in getting this head of state
21 worksheet?

22 A Our liaison division coordinates it.

23 Q Okay, thank you. And the Vice President, if we can go
24 ahead and keep that up, the Vice President, does it say on
25 the sheet what the function of his visit was? Under the

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1 fifth --

2 A Yes, in the itinerary, the Electoral College
3 certification is listed in the function column.

4 Q And who all was this distributed to?

5 A It was distributed to the detail and the Capitol Police
6 and our liaison division.

7 Q In general, can you tell us what the plan was for the
8 Vice President, you know, what time he was going to arrive
9 and tell me just what was anticipated.

10 A We expected him to arrive around 12:30 and it was to
11 certify the vote, and we would stay at the Capitol until the
12 conclusion of the certification.

13 Q What type of movement throughout the Capitol did you
14 anticipate the Vice President would have to make?

15 A We expected to potentially have to make several
16 movements between the House and Senate side whenever there
17 would be an objection to the vote.

18 Q Had you basically studied up on what was involved in
19 Electoral College to know what, kind of what was going to go
20 on?

21 A Yes, I was briefed by our liaison division on the
22 formalities of the process.

23 Q When the Vice President arrived at the Capitol, where
24 was the first place that he was going to be taken?

25 A To his office.

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1 Q And what side of the Senate, what side --

2 A The Senate side.

3 Q I'm sorry, got ahead of myself. And then where did you
4 anticipate him having to go?

5 A To the House Chamber.

6 Q Okay. And then if there was an objection, where would
7 the Vice President -- objection during the certification,
8 where would the Vice President have to go?

9 A We would return to the Senate Chamber.

10 Q So your anticipation was there was going to be quite a
11 bit, even in the best circumstance, quite a bit of movement
12 from the Senate to the House side by the Vice President,
13 correct?

14 A That's correct.

15 Q Does that -- what issues does that bring up for someone
16 providing protection for the Vice President, this type of
17 movement?

18 A The issues we did not know how long we would be there,
19 we obviously had to stay until the certification was
20 complete, so we just knew logistically we would be on both
21 sides of the Capitol repeatedly and we could go very late
22 into the evening.

23 Q Is there someone in the Capitol with the Secret Service
24 that you worked with to maybe get down into the details of
25 the Vice President's movements?

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1 A We work with our liaison division which -- is Secret
2 Service agents.

3 Q Okay. I was looking for a name of someone that you
4 worked with on that particular day.

5 A Yep, Lanelle Hawa.

6 Q And tell me, about what time did you get to the
7 Capitol?

8 A I'd say I arrived around 10 a.m.

9 Q And what did you do when you arrived?

10 A I walked through the proceedings with Lanelle Hawa, she
11 again advised me on the formalities that would take place.

12 MR. BURNHAM: Objection, hearsay.

13 THE COURT: It is hearsay. Sustained. Although
14 the general subject, rather than the specific information,
15 really is not objectionable, that she gave general advice.

16 Q And would it be fair to say that you and Agent Hawa
17 walked through a game plan of what would occur when the Vice
18 President came that day?

19 A Yes.

20 Q Can you explain to us, you said you were on the Vice
21 President's detail but you didn't arrive with the Vice
22 President; how does that work?

23 A So as the site agent it's my responsibility to be there
24 early in advance of the Vice President and to prepare and
25 make sure everything is ready at the site for the Vice

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1 President to arrive.

2 Q And I'll show you Exhibit 205 if we could pull that up.

3 Can you tell us what we're looking at with State's --

4 Government Exhibit 205?

5 A It's the e-mail with the head of state notification.

6 Q That's the e-mail that attached that head of state
7 notification?

8 A Correct.

9 Q And you said that that was -- we can see some of the
10 people that that was sent to but your name's on there and
11 then that's from, that's the Agent Hawa that you spoke of,
12 correct?

13 A Yes.

14 Q Did you -- the Government's Exhibit 206 kind of set out
15 the best case scenario, if everything went according to plan,
16 correct?

17 A That's correct.

18 Q Did you also go over an emergency action plan?

19 A I did, with Lanelle Hawa.

20 Q And what is an emergency action plan?

21 A It's a plan that we would put in place in the event of
22 an emergency with our protectee.

23 Q Okay, thank you. And did Vice President Pence arrive
24 to the Capitol on January 6th, 2021?

25 A He did.

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1 Q And what time did he arrive?

2 A Between 12, 12:30.

3 Q And when did he next leave the Capitol grounds?

4 A The next day around 3, 4 in the morning.

5 Q Okay. So I just want to be clear that when he arrived
6 at 12, 12:20 in the afternoon, he never left the Capitol
7 grounds until 3, 3, 4:00 the next morning?

8 MR. BURNHAM: Objection, your Honor, leading.

9 THE COURT: I'm sorry?

10 MR. BURNHAM: Objection to leading.

11 THE COURT: No, he's repeating what she already
12 testified to so the objection's overruled. Did you get an
13 answer to that question?

14 Q Is that correct, he never left?

15 A That's correct, he never left.

16 Q Thank you. What did you do when the Vice President
17 arrived at the Capitol?

18 A When the Vice President first arrived, I distributed
19 the visitor passes to the members of the detail that would be
20 entering the Capitol, and then we proceeded to the second
21 floor where the Vice President's office was.

22 Q And when he arrived, where did his motorcade drop him
23 off at?

24 A They dropped him off at the Senate Carriage entrance
25 and then they would have relocated at some point.

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1 Q Okay, thank you. And are you then, after Vice
2 President Pence arrived at the Capitol, are you pretty near
3 him if not in the same room, you are at least in his
4 proximity throughout the whole time he's at the Capitol?

5 A Yes.

6 Q Thank you. Where is the Vice President's office in the
7 Senate?

8 A It's on the second floor.

9 Q And what -- we have a stipulation but what time,
10 approximately what time did the certification of the
11 Electoral College start?

12 A I don't recall, I would say maybe 1:00.

13 Q Okay, it's in the stipulation, so ... if the
14 stipulation says that at approximately 12:56 the members of
15 the Senate proceeded from the Senate Chamber to the House
16 Chamber, would you have any disagreement with that?

17 A I would not.

18 Q And Vice President Pence would have then went with the
19 Senate over to the House Chamber?

20 A Yes.

21 Q And did you follow along?

22 A I did.

23 Q And did the certification of the vote then begin?

24 A It did.

25 Q And up to this point, is everything going to plan?

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1 A Yes.

2 Q And did there come a time then when Vice President
3 Pence needed to go back to the Senate side?

4 A Yes, there was an objection in the vote so we returned
5 to the Senate side.

6 Q And again, that's all according to plan, correct?

7 A Correct.

8 Q At this point in time when you went from the Senate to
9 the -- I'm sorry, when you went from the House side to the
10 Senate side, were you aware of anything that gave you concern
11 going on on the Capitol grounds?

12 A Yes. While I was waiting outside the Chamber, I could
13 hear the crowds coming towards the Capitol and I walked over
14 to the windows and I could see the people coming.

15 Q And at this time, were you aware of any unauthorized
16 person inside the building?

17 A I was not aware of anyone at that time.

18 Q Only on the grounds?

19 A Only on the grounds.

20 Q And what impact did the individuals coming onto the
21 grounds have in, on your job of protecting the Vice
22 President?

23 A At that point, we started to enact our emergency action
24 plan.

25 Q Okay. Was there a decision made regarding the

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1 President -- Vice President's motorcade?

2 A Yes, the decision was made to relocate the motorcade.

3 Q And can you explain that in a little bit more detail?

4 A The Vice President's motorcade typically is positioned
5 on the plaza, that's at least what I refer it to is the
6 plaza, and there isn't much of a barrier at that location, so
7 the decision was made to relocate the vehicles so that the
8 vehicles would not be stuck on the plaza with all the people.

9 Q And I'll show you, play for you what we have as
10 Government's Exhibit 402 which will show the movement of that
11 motorcade.

12 (Video playing.)

13 MR. DISNEY: I'm sorry, that's not the right one.

14 THE COURT: That's pretty quick.

15 MR. DISNEY: Could I have just one second?

16 THE COURT: This is 403, you said 402.

17 MR. DISNEY: Yes, your Honor, I stand mistaken,
18 this is 403.

19 (Government's Exhibit 403 playing.)

20 Q Can you tell us what we're looking at here, Agent?

21 A This is a video of the Vice President's motorcade
22 relocating.

23 Q This was, would you agree, maybe the start of the
24 emergency plan?

25 A Correct, it was.

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1 Q And why did you feel necessary to have that motorcade
2 move?

3 A Because as you can see in the video, there's the crowds
4 there that have formed in close proximity to the vehicles so
5 we could not have our motorcade compromised by the general
6 public.

7 Q Thank you. And we can stop. Now Agent Glavey, was
8 there a decision made to relocate the Vice President?

9 A Yes, there was.

10 Q And why is that?

11 A Because the Capitol had been breached by the general
12 public so it was no longer secure and we didn't know if there
13 were people in the building with any kind of weapons.

14 Q Now before you told us that you were aware that the
15 Capitol grounds had been breached. Are you saying now the
16 Capitol as in the Capitol building was breached?

17 A Yes.

18 Q How do you know that?

19 A When the motorcade was relocated, I broke away from the
20 detail and walked the route that we would take to our
21 relocation area, and when I was returning from that area back
22 to where the detail was, I heard the glass smash and then
23 shortly after I saw the public entering the building. They
24 were already inside the building, they were crossing the
25 doorway where I was standing in close proximity.

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1 Q Did you have a radio with you at this time?

2 A I did.

3 Q And were you able to communicate what you saw to your
4 supervisors?

5 A Yes, I used my radio and I also was speaking directly
6 to one of my supervisors.

7 Q Thank you. And if we could play Exhibit 207.

8 (Government's Exhibit 207 was played.)

9 Q We'll play that again so you can hear it.

10 (Government's Exhibit 207 was replayed.)

11 Q I didn't hear it.

12 A I can hear it. "They've entered the building, hold,"
13 is what was said.

14 Q "They've entered the building, hold." What did you
15 mean by that?

16 A In that, I was letting the supervisor know that
17 they've -- the public has entered the building and to hold,
18 don't bring the Vice President down.

19 Q Thank you. And this was obviously not according to
20 plan, correct?

21 A Correct.

22 Q And then I have two more, hopefully we can get them
23 louder, if not just tell me what they say, but Government's
24 Exhibit 208.

25 (Government's Exhibit 208 was played.)

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1 Q Can you tell me what that says?

2 A That, "They're making access to the second floor."

3 Q Who is the "they" that you're talking about?

4 A The public.

5 THE COURT: Could you get the timeline in line? I
6 don't think I know or maybe I missed it, the time of the
7 first radio communication and the second radio communication.

8 Q Do you have those times? Can you give me an
9 approximation of the times?

10 A I can't.

11 Q Okay. It was after the motorcade had been moved,
12 correct?

13 A Correct.

14 Q And it was before the Vice President had been taken
15 from his office?

16 A Yes.

17 Q And we know from the stipulation that he was taken --
18 well, we'll get into that in a minute, so, I'll get -- I'll
19 lay a little bit more foundation?

20 THE COURT: All right, thank you.

21 Q If we could play Government's Exhibit 209.

22 (Government's Exhibit 209 was played.)

23 Q What was it you said there, Agent?

24 A There were 6 to 10 officers between us and the public
25 that were 5 to 10 feet away from me.

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1 Q And at this point, the Vice President was where?

2 A He was upstairs in his office.

3 Q So the -- he had, he was still in the Senate side?

4 A Correct.

5 Q Because of the people who had entered the building, was
6 a decision made to relocate the Vice President?

7 A Yes.

8 Q And did you observe that happening?

9 A Yes.

10 Q And was that part of the emergency action plan?

11 A Yes.

12 Q Why did you feel it was necessary to move the Vice
13 President, why didn't you just let the certification keep
14 going and walk through the people and --

15 A The building was no longer safe for the Vice President
16 or his family.

17 Q Why?

18 A Because we had people in there and we did not know if
19 they had weapons or what their intentions were towards the
20 Vice President.

21 Q Thank you. And I want to show you Government's
22 Exhibit 403. Is this -- I'm sorry, your Honor, this is 404,
23 this is where I am confused.

24 THE COURT: 404 is not in evidence.

25 MR. DISNEY: Your Honor, I -- we've renumbered one,

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1 and I said 403, it should have been 404 so I would withdraw
2 403 and ask that 404 be admitted.

3 THE COURT: So 404, without objection, is in
4 evidence.

5 MR. BURNHAM: No objection.

6 THE COURT: And 403 has been removed at this time
7 from evidence. Go ahead.

8 Q So let's go ahead and pull that 404 up. Do you
9 recognize this stairway?

10 A Yes, I do.

11 Q What is that stairway?

12 A It's the stairwell that is right outside the Vice
13 President's office.

14 Q Do you have a name for it?

15 A I do not, it's just right there by the Senate Lobby.

16 THE COURT: The stairway right outside the Vice
17 President's office.

18 MR. DISNEY: Thank you. And your Honor, we have a
19 stipulation that the time is accurate. And what time is
20 that?

21 THE COURT: Is this a different stipulation or is
22 this in 702?

23 MR. DISNEY: No, it's a different stipulation that
24 we can get to now.

25 THE COURT: Just for recordkeeping purposes, as

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1 soon as we refer to a stipulation, I want it admitted into
2 evidence so we have the record complete.

3 MR. DISNEY: Thank you. Your Honor, we would move
4 to, if I didn't already move to admit it, I would move to
5 admit the stipulation regarding the certification of the
6 Electoral College.

7 THE COURT: 702 is in evidence.

8 MR. DISNEY: And next I would refer the Court to
9 Exhibit 701.

10 THE COURT: And that too will be admitted into
11 evidence without objection since it's a stipulation.

12 MR. DISNEY: And essentially what it says for our
13 purposes, your Honor, is that these videos are true and
14 accurate and that the times reflected are true and accurate.

15 THE COURT: All right.

16 Q And Agent, what time does this video have on it?

17 A 2:25.

18 Q And what are we gonna see here?

19 A You're going to see the Vice President come out of the
20 lobby.

21 Q Thank you. If we could go ahead and play the exhibit.

22 (Government's Exhibit 404 playing.)

23 Q I'm going to ask you to pause it in just a second. I
24 mean, no, go ahead, I'll tell you when. Right here. Your
25 Honor, may I approach the witness?

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1 THE COURT: You may.

2 Q Would you know, I have an Exhibit 403A, would you write
3 down the time that is shown on the video, does that -- does
4 the still that's on the video match the picture that's on the
5 403A?

6 A Yes.

7 Q And would you write down the time when, the time that
8 the Vice President first leaves the office.

9 A (Witness complies.)

10 Q And the witness wrote 2:26 in compliance. And if we
11 could just go ahead and finish that video.

12 (Government Exhibit 404 played.)

13 Q Agent, where are you at here?

14 A I was at the bottom of that stairwell.

15 Q And is the Vice President then taken to a secure
16 location in the Capitol?

17 A Yes.

18 Q Thank you. And did you remain with the Vice President
19 in that location?

20 A Yes.

21 Q Because of moving the Vice President to that secure
22 location, did the certification of the Electoral College have
23 to be suspended?

24 A Yes, it was delayed.

25 MR. DISNEY: And, your Honor, that is all the

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1 questions I have at this time.

2 THE COURT: All right. Mr. Burnham. And 403A is
3 not in evidence, by the way, at this time.

4 MR. DISNEY: Right. Yes, thank you for that.

5 CROSS-EXAMINATION BY MR. BURNHAM:

6 Q Good morning.

7 A Morning.

8 Q I'm Charles Burnham, I have a few questions. So you
9 testified on direct that you were, for what period of time
10 were you on the Vice President's staff, like from when to
11 when?

12 A I was on the Vice President's detail a total of four
13 years, but at the time of January 6th, I was three years.

14 Q And so would I be correct in assuming that as a part of
15 that, as a part of that job, putting January 6th itself aside
16 for a moment, part of your job would be to remain aware of
17 different emergency situations that could arise with respect
18 to the Vice President, right?

19 A Yes.

20 Q All right. And so you would have at least in a general
21 sense been aware that there had been a significant amount of,
22 at times, violence or protest activity in the city during
23 2020, right?

24 A Protest activity, yes.

25 Q And I'm talking about the protests surrounding the

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Elizabeth Glavey - Cross

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1 George Floyd issue, other protests in support of the former
2 President before January 6th, right?

3 A Yes.

4 Q And at those protests, did you come to learn that there
5 had been clashes between different sets of protesters of
6 opposing views, BLM versus Trump or Antifa versus Trump, that
7 sort of thing?

8 A Yes, I haven't worked any events where I had clashes
9 with protesters at my particular sites, but I was --

10 Q But you were aware that they had taken place?

11 A Yes.

12 Q And did you hear either reported at those protests
13 there was bricks thrown, rocks thrown, batteries, punches,
14 you know, that kind of activity in general?

15 MR. DISNEY: Your Honor, relevancy, personal
16 knowledge.

17 MR. BURNHAM: Your Honor --

18 THE COURT: Well, I take personal knowledge to mean
19 a hearsay objection.

20 MR. DISNEY: Yes.

21 THE COURT: And I understand your relevance point.
22 Mr. Burnham, you may respond.

23 MR. BURNHAM: You know, the witness has testified
24 not only about her specific activities on that day but also
25 her general role, her background, what she did for the Vice

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Elizabeth Glavey - Cross

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1 President so I just ask for a little latitude to probe that
2 area.

3 THE COURT: I'm going to give latitude to have her
4 make general observations but to testify to specific things
5 that happened at protests, I think you do run into a hearsay
6 objection. If she wasn't there.

7 MR. BURNHAM: What if I --

8 THE COURT: Which is what she said, she wasn't
9 there, so --

10 MR. BURNHAM: Can I inquire --

11 THE COURT: -- it is hearsay.

12 MR. BURNHAM: Can I inquire not for the truth but
13 just to whether she heard there had been violent clashes, is
14 that question permissible?

15 THE COURT: Not for the truth.

16 MR. BURNHAM: Not for the truth, whether she had
17 heard it reported or been informed that such a thing --

18 THE COURT: But you want to use it for the truth
19 ultimately.

20 MR. BURNHAM: Not necessarily, your Honor, if it
21 had been reported in the news, that's relevant to the
22 argument the Court is anticipating about -- I might make
23 later, if it had been reported that it had taken place,
24 that's all I need.

25 THE COURT: Well, I can sort it out so I'll allow

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1 you to go ahead and ask the question and the witness to
2 answer it. I'm not going to allow you to drill very deeply
3 into it, though.

4 Q I'll try to ask it as bare bones as possible, just as a
5 general matter, had you heard it reported say in the news
6 that there had been clashes between protesters in Washington,
7 D.C. of opposing political viewpoints?

8 A Yes.

9 Q Thank you. Now you testified that in preparing to
10 protect Vice President Pence that day, you had to familiarize
11 yourself to a certain extent with how the Electoral College
12 functioned, is that right?

13 A Yes, the procedure, as far as the formalities that
14 would take place for the procession of the Vice President
15 from the Senate side to the House side and vice versa.

16 Q What would trigger that movement would be an objection
17 to say Alaska's votes from a Senator and a Congressman, would
18 that be correct?

19 A Correct.

20 Q And were you -- you would have been aware that quite a
21 good number of Senators and Congressmen had in fact announced
22 their intention ahead of time to object to various states, is
23 that right?

24 A Correct.

25 Q And that I assume is why you had done the planning you

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1 did to be shuttling back and forth repeatedly and perhaps
2 staying there late into the night, right?

3 A That's correct.

4 Q And was it your understanding that if an objection to
5 say, again, we'll take Alaska's votes, was sustained, then
6 that could result in the Alaska votes not being certified, is
7 that right?

8 A I just knew of the proceedings as far as the Vice
9 President's movements, as far as how the electoral vote took
10 place. That information I'm not concrete on.

11 Q Were you aware that there had been talk that one of the
12 options that the Vice President arguably had was to delay the
13 certification; is that something that was on your radar?

14 A It's something I had heard on the news, not necessarily
15 from a procedural standpoint within the Capitol.

16 Q Did you have any sort of planning for what you were
17 going to do if the certification was delayed beyond that
18 date?

19 A For us, we just had to work our event until the
20 conclusion so my responsibility was to stay at the Capitol
21 until the Vice President left.

22 Q Counsel for the Government showed you a video just a
23 moment ago about, you know, how the Vice President and his
24 staff leaving the doors there, you recall that, right?

25 A Yes, I do.

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1 Q Those doors, wouldn't it be correct that they just say
2 something like U.S. Senate or I think they said U.S. Senate,
3 that right?

4 A Correct, I -- honestly have not read it, but if you
5 pulled it up, I could read it.

6 Q Well, they don't say anything like this is Vice
7 President Pence's office, there's nothing like that, correct?

8 A No.

9 Q They don't have a label on the doorframe saying Vice
10 President or anything like that, right?

11 A Right.

12 Q As to the radio runs, you recall the first radio run
13 where you said that they've entered the building or something
14 to that effect?

15 A Yes, I think I said they entered the building, hold.

16 Q Do you remember where you were located when you made
17 that call?

18 A I was on the first floor.

19 Q What part of the first floor?

20 A I would have been near the stairwell that led up to
21 outside that office in the video.

22 Q How about when you made the call where you said
23 protesters are in the building; where did you observe
24 protesters entering the building from?

25 A I was all in that general area so there was another

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1 small stairwell, so I was in that area which was close to a
2 doorway, and the doorway is where I could see the protesters
3 passing by through the hallway.

4 MR. BURNHAM: Thank you, no further questions.

5 MR. DISNEY: No redirect, your Honor.

6 THE COURT: All right. Thank you very much.

7 THE WITNESS: Thank you, sir.

8 THE COURT: You may step down.

9 MR. DISNEY: May this witness be excused?

10 THE COURT: She may be.

11 (The witness was excused.)

12 THE COURT: Next witness.

13 MR. DISNEY: Your Honor, we'd call Captain Sean
14 Patton.

15 THE CLERK: Good morning, sir. Please raise your
16 right hand.

17
18 S E A N P A T T O N , called as a
19 witness and being duly sworn, testifies as follows:

20 THE COURT: Good morning, Captain Patton.

21 THE WITNESS: Good morning.

22 DIRECT EXAMINATION BY MR. DISNEY:

23 Q Sir, would you tell us your name?

24 A Good morning. My name is Sean Patton.

25 Q And who are you employed by?

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1 A I am a captain with the United States Capitol Police.

2 Q How long have you worked for the Capitol Police?

3 A I'm in my 24th year.

4 Q And how many of -- what is your present position?

5 A I am currently assigned to the assistant commander of
6 the Capitol division since October of 2020.

7 Q Thank you. And what is the mission of the United
8 States Capitol Police?

9 A The mission of the United States Capitol Police is to
10 protect and defend the Congress so that they can complete
11 their legislative duties in a secure and open environment and
12 also protecting the facilities, their staff, visitors from
13 crime or disruption.

14 Q What about the protection of the Capitol building and
15 grounds itself?

16 A Correct, and that is also included in our mission to
17 protect the facilities in which the legislative process is
18 being conducted.

19 Q I want to talk to you about the events of January 6,
20 2021. What was your -- how would you describe your
21 responsibilities on that day?

22 A On January 6th, 2021, I was assigned as the assistant
23 commander for routine operations inside the Capitol building
24 and that means I'm responsible for the men and women who work
25 at the Capitol itself, not the office buildings that are on

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1 either side of the building or CDU.

2 Q Okay. Would that include protection of the Capitol
3 grounds or just the building itself?

4 A That would include the Capitol building and the
5 immediate grounds around the Capitol as far as the barricade
6 entrances and the outer areas of the building. I supervise
7 officers who work outside the Capitol called first responder
8 unit. Those men and women are outside 24/7, they never come
9 inside and they're there to protect the building exterior.
10 And then I'm also responsible for the men and women who work
11 inside the building as well as the men and women who were
12 working inside the House and Senate Chambers.

13 Q And in your capacity as a assistant commander at the
14 Capitol, did you work inside the Capitol on a daily basis?

15 A Yes, sir.

16 Q And are you familiar with the U.S. Capitol and the
17 grounds?

18 A Yes, I am.

19 Q I want to show you -- I'm going to move for admission
20 of Government's Exhibit 101, the map of the Capitol grounds.

21 THE COURT: All right, you spoke to them, I didn't
22 hear but I think you said 101.

23 MR. DISNEY: 101, I'm just seeing if they have an
24 objection. Did you have an objection?

25 MR. BURNHAM: No objection.

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1 MR. DISNEY: I would move to admit 101.

2 THE COURT: 101 is admitted without objection.

3 Q And if we could bring that up and maybe zoom in just a
4 little bit. Can you just give us, first of all, where is the
5 United States Capitol located in general, is it in the
6 District of Columbia?

7 A Yes, it is.

8 Q I just want to get that jurisdictional issue out. So
9 can you tell me the streets that surround it?

10 A The address of the United States Capitol is Number 1
11 First Street, Northwest, and it's surrounded by First Street
12 to the -- surrounded by First Street to the east,
13 Constitution Avenue and Independence Avenue, and First Street
14 in the west.

15 Q And this Exhibit 101 in the top right-hand corner has a
16 compass that's pointing to the north, is that correct?

17 A Yes, sir, compass is up in the upper right-hand corner.

18 Q That's accurate?

19 A Yes, sir.

20 Q Tell me, what is the East Plaza area?

21 A So if you look at the center of this picture, you see a
22 diagram of the United States Capitol, directly to the top of
23 the picture is an area called the East Plaza, or the East
24 Front as we refer to.

25 Q And what are those areas that say Northeast Lawn and

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1 Southeast Lawn, what are those areas?

2 A Those are grassy areas that are within the Capitol
3 perimeter, again that outline that I just told you,
4 surrounded by Constitution, first, Independence and
5 Constitution, we also commonly refer to the area as the
6 Senate egg which is labeled Northeast Lawn and also the House
7 egg which is referred to as the Southeast Lawn on your map.

8 Q And then I want to talk about the west side of the
9 Capitol, can you take us through the Capitol grounds moving
10 from the reflecting pool up to the Capitol building itself?

11 A Yes, sir. So again with the Capitol in the center of
12 the picture, directly to the lower area, you see an area
13 called the West Lawn of the Capitol, and then joining on the
14 West Lawn is a walkway we refer to as the Pennsylvania Avenue
15 Walkway, and that is because it's an extension of
16 Pennsylvania Avenue, the street which is on the left-hand
17 side of the Capitol reflecting pool. Pennsylvania Avenue has
18 a circle which we refer to as Peace Circle, and then the
19 Capitol ground goes up, walkway taking visitors to the
20 Capitol, on the adjoining side. Next to the West Lawn, same
21 thing, that walkway is called Maryland Avenue Walkway, which
22 is an extension of Maryland Avenue, and then we have a
23 Garfield Circle is in the center right there, the grassy
24 areas on either side of the West Lawn are also areas that are
25 free speech areas, and then the lawn areas move up to the

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1 area which we call the Lower West Terrace.

2 Q And I know that the Court probably knows this but just
3 briefly, if I was at the White House and wanted to walk to
4 the Capitol, what would be the most direct route?

5 A If you were at the White House, which is located at
6 1600 Pennsylvania Avenue, you could walk straight down
7 Pennsylvania Avenue and it would end at the Capitol.

8 Q And it would take me right to the Peace Circle?

9 A Correct, sir.

10 Q And take me to the northwest side of the Capitol?

11 A That is correct.

12 MR. DISNEY: Thank you. Now I would like to admit
13 Government's Exhibit 201.

14 THE COURT: Any objection?

15 MR. BURNHAM: No, your Honor.

16 THE COURT: All right. 201 is admitted.

17 Q And I know that this is a stock photo, but can you
18 explain how the West Lawn of the Capitol is terraced?

19 A Well, the Capitol was constructed on an area called
20 Jenkins Hill, and the terrace, the building itself, you see
21 here, has sloping terraces that make the building flow into
22 the landscape and the picture that you see here is a view of
23 the Senate side because it's showing the -- it's an angle
24 pointing to the Senate Chamber. The Dome is right behind the
25 Senate Chamber and on the right-hand side is the area we

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1 refer to as the Upper West Terrace, you can see through the
2 tree line that there is an embankment that's higher up. In
3 order to get to that area, you would have to use the
4 staircase.

5 MR. DISNEY: And I would move to admit Government's
6 202.

7 MR. BURNHAM: No objection.

8 THE COURT: Without objection, 202 is admitted.

9 Q And I know again this is a stock photo but can you
10 explain the different levels of the Capitol and kind of
11 explain what we're looking at here?

12 A Yes, we're looking at a view of the West Front of the
13 Capitol, again, with the Capitol Dome in the middle of the
14 picture. On the left-hand side, you see the Senate Chamber,
15 which is the north side of the building. On the right-hand
16 side of the picture, the end of the building is referred to
17 as the House Chamber. If you see in the middle of the
18 picture, there is a door with a little opening, we refer to
19 that as the Lower West Terrace door, and there is a line on
20 that Lower West Terrace that goes straight across to both
21 stairways that are the landings for those appropriate
22 stairways, and then right above those stairways is an area
23 referred to as the Upper West Terrace, and that is the top
24 landing area that authorized personnel could walk along and
25 go around the building to the other side.

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1 Q So the grassy area, what's that commonly referred to?

2 A The grassy area in the center of the picture is
3 referred to as the West Lawn, West Front, or even Area 1.

4 Q And then if I come up off the grassy area onto the
5 first cement, what's that called?

6 A Typically call that the Lower West Terrace walkway.
7 Again it allows people to walk from say the Pennsylvania
8 Walkway over to the Maryland Walkway so they can make that
9 loop.

10 Q And then you referred to the Upper West Terrace, what
11 separates the Upper West Terrace from the Lower West, or
12 Upper Terrace from the Lower Terrace?

13 A What separates the Upper West Terrace from the Lower
14 West Terrace is the two flights of stairs. There are, again,
15 behind those doors that you see in the center of the picture,
16 that is an opening to access the Lower West Terrace door, and
17 there's offices on that level as well.

18 Q Now on January 6th, was there something going on on the
19 West Lawn that changed how the structure of the Lower West
20 Terrace?

21 A Yes, there was.

22 Q What's that?

23 A The Architect of the Capitol who's responsible for the
24 maintenance of the building was constructing the inaugural
25 platform for the Presidential inauguration.

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1 MR. DISNEY: I'll move to admit Government's 203.

2 THE COURT: Without objection? 203.

3 MR. BURNHAM: No objection.

4 THE COURT: Thank you, Mr. Burnham. 203's
5 admitted.

6 Q And what does this red box demonstrate?

7 A The red box area represents the construction area that
8 is off limits for the construction of the inaugural stage.

9 Q Okay. How many stories total is the U.S. Capitol?

10 A The Capitol has four stories. As you can imagine as
11 the building comes into the center, those floors become
12 smaller, but there is a fourth floor of the Capitol.

13 Q Okay. And then you said the Senate is on the left side
14 and the House is on the right side, correct?

15 A In this picture, correct.

16 Q Yes. And when there's a Joint Session of Congress,
17 where do the Senate and House meet?

18 A When there's a Joint Session of Congress, they meet in
19 the House Chamber.

20 Q And are you familiar with the certification of the
21 Electoral College?

22 A Yes, I am.

23 Q And is it a Joint Session of Congress?

24 A Yes, it is.

25 Q So it would be held on the House side?

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1 A Yes, it is.

2 Q And does that involve the Vice President as the
3 President of the Senate?

4 A Yes, it does.

5 Q And is there -- well, I'll strike that. I want to talk
6 to you about security measures at the Capitol on January 6,
7 2021. First of all, can we -- I want to focus on the Capitol
8 building itself, was the Capitol building open to visitors on
9 January 26, 2021?

10 THE COURT: January 6th, you mean?

11 Q I'm sorry, what did I say? January 6, 2021.

12 A No, the Capitol was not open to the public on
13 January 6, 2021 because of COVID.

14 Q So who then was allowed into the Capitol?

15 A Members and their staff and invited guests.

16 Q Okay. So someone, the Vice President or someone who
17 had official business could go?

18 A Correct, sir.

19 Q Is the Capitol building, I think you said this but is
20 it under patrol by the Capitol Police 24/7?

21 A Yes, it is.

22 Q And are all the doors of the Capitol manned?

23 A All of the doors to the Capitol are not staffed and the
24 reason being is some of the doors are fire emergency exits,
25 those are means of egress in the event of an alarm or an

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1 emergency. The only doors that the Capitol Police will staff
2 are doors where members and official business visitors can
3 enter into the building.

4 Q So if I'm an official visitor and I have business at
5 the Capitol on January 6th, what type of screening would I
6 have to go through?

7 A You would have to go through a magnetometer, any
8 personal belongings that you may have in your person carrying
9 a bag would have to go through an x-ray machine, and as well
10 as we also have explosive detection swiping we call an
11 itemizer screening so, that also is swabbed, your personal
12 belongings or your keys, some item that belongs to you for
13 explosives.

14 Q So would it be correct that no one got into the Capitol
15 unless they had their own security detail or unless they went
16 through that screening?

17 A That is correct, with the exception of members of
18 Congress of course.

19 Q Okay, thank you.

20 THE COURT: The way you said that, no one got into
21 the -- you mean no one was supposed to get into the Capitol.

22 MR. DISNEY: Yeah, no one was authorized to go in.

23 A Correct, no one was authorized to bypass security
24 screening unless they are a member of Congress, a VIP on a
25 protection detail, or authorized staff.

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1 Q Thank you. Now I want to -- we talked about security
2 at the Capitol building, I want to talk about security at the
3 Capitol grounds. On a day-to-day basis, is the Capitol
4 grounds open to the public?

5 A So that is a tricky question because we have to put our
6 minds around are we in COVID, are we not in COVID.

7 Q Let's say no COVID.

8 A If it was no COVID and it was just a regular day, the
9 public is welcome to be on the Capitol grounds.

10 Q Then what about during this COVID plague, were the
11 Capitol grounds open to the general public?

12 A So during the COVID pandemic, the areas of the Capitol
13 which we call the grassy areas or the public areas, they were
14 under restriction because we were following the D.C.
15 government rules for large gatherings because people were
16 still being restricted, I think groups, no more than groups
17 of 10 were being allowed to congregate in any given area.

18 Q And then on the days leading up to the January
19 inauguration, was there anything else going on at the Capitol
20 that restricted the grounds further?

21 A Yes, so on the day of January 6, 2021, in addition to
22 the Joint Session, we were aware of a large pro-Trump
23 demonstration that was going to be occurring at the Capitol.

24 Q Okay. And I probably messed that up, but you talked
25 about on this photograph here that they were building a

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1 stage?

2 A Yes, they were building a stage for several months for
3 the Presidential inauguration.

4 Q And did the building of that stage add some other
5 restrictions to the grounds?

6 A Yes. The entire West Front -- well, excuse me, the
7 West Front area was closed for construction for several
8 months prior to January of 2021. During the construction,
9 there are times where we open small portions of the West Lawn
10 to receive the Capitol Christmas tree and then the public
11 could come in, take photos with the tree, but on January 6th,
12 that entire area was closed.

13 Q So suffice it to say, setting aside the certification
14 of the Electoral College, there were restrictions in place on
15 the grounds to begin with?

16 A Oh, yes, sir.

17 Q COVID, the building of the stage, correct?

18 A Correct, as well as snow fencing and other bike rack
19 along the perimeter of the Capitol that had been there
20 several months because of the ongoing construction.

21 Q Then specifically as it relates to January 6th, was
22 there a restricted area that was established, specifically
23 for January 6th, and the Vice President coming to the
24 Capitol?

25 A The question is did we extend the security perimeter

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1 because of the January 6 -- excuse me, because of the
2 electoral vote count and the demonstration?

3 Q Yes.

4 A The answer is yes.

5 MR. DISNEY: I'll ask that Government's 103 be
6 admitted.

7 THE COURT: Without objection?

8 MR. BURNHAM: I'm sorry, what was the number?

9 MR. DISNEY: 103, it was the perimeter map.

10 MR. BURNHAM: No objection.

11 THE COURT: Thank you, Mr. Burnham, no objection
12 and 103 is admitted.

13 Q And this is a photo of the Capitol grounds, correct?

14 A Yes, it is, sir.

15 Q What does the red line represent?

16 A The red line represents the extended security perimeter
17 on January 6 for the electoral vote count and for the
18 demonstration activity that was scheduled to happen that day.

19 Q And what was the construction of that perimeter, how
20 was it actually made?

21 A The majority of that perimeter consisted of bicycle
22 rack, while it also encapsulated natural portions of the
23 Capitol grounds and infrastructure that we have such as
24 kiosks and barricades and retaining walls.

25 Q And was it all connected in some fashion?

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1 A It was, everything was connected in some fashion, so
2 individuals would not be allowed to enter inside that red
3 area that you have outlined.

4 Q Was there any signage that alerted people that they
5 were not allowed to go into that area?

6 A Yes, on certain portions of the bike rack, as well as
7 the snow fencing, there were signs that said closed by order
8 of the Capitol Police Board, area closed.

9 Q I want to talk to you about the events of January 6th,
10 2021, and would it assist you in explaining the events if we
11 could go back to Exhibit 103?

12 A Yes, sir.

13 Q If we could then go back to 103.

14 THE COURT: And at some point this morning we'll
15 need to take a morning break.

16 MR. DISNEY: This might be a good time.

17 THE COURT: If this is a good time, why don't we do
18 it now.

19 MR. DISNEY: Yes, sir.

20 THE COURT: So by that clock, we'll resume at 11:30
21 which is in 12 minutes. Thank you.

22 THE CLERK: This Honorable Court stands in recess
23 until 11:30 a.m.

24 (Court in recess, 11:18 a.m. to 11:33 a.m.)

25 (Open Court.)

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1 THE COURT: All right, Captain Patton, you're still
2 under oath. Mr. Disney.

3 MR. DISNEY: Your Honor, I spoke with defense and
4 we can move to admit some exhibits and maybe save a little
5 bit of time.

6 THE COURT: That's fine.

7 MR. DISNEY: Move to admit 104, 210, 211, and 212.

8 MR. BURNHAM: No objection.

9 THE COURT: 210, 211, and 212 are not on my list.

10 MR. DISNEY: I'm sorry, your Honor, you're right.
11 So I move to admit 104, and then 400 through 419.

12 THE COURT: Through 419?

13 MR. DISNEY: Yes.

14 THE COURT: No objection to those, Mr. Burnham?

15 MR. BURNHAM: No, your Honor.

16 THE COURT: So that includes 403 that was not
17 admitted before?

18 MR. DISNEY: Yes, your Honor.

19 THE COURT: All right.

20 MR. DISNEY: And then 501 through 508.

21 MR. BURNHAM: No objection.

22 THE COURT: 501 through 508 and it includes all the
23 As in that numbering sequence?

24 MR. DISNEY: Yes, your Honor.

25 THE COURT: All right. Thank you.

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1 Q So Officer Patton --

2 THE COURT: He probably likes to be called Captain.

3 Q Captain Patton, are you familiar with the -- how the
4 Capitol grounds and building were overrun on January 6th?

5 A Yes, I was.

6 Q And were you present there on that date?

7 A Yes, I was, sir.

8 Q And do you have firsthand knowledge on how this
9 occurred?

10 A Yes, I do.

11 Q What time did you get to work on January 6th?

12 A I arrived to work around 6:00 in the morning.

13 Q And what was the first thing you did when you got to
14 work?

15 A When I arrived at work, one of the first things I did
16 was grab another sergeant of mine from the midnight tour and
17 he and I had personally walked that entire perimeter of the
18 Capitol grounds, that same red area that you had outlined, we
19 had walked that to make sure that all of the perimeter was
20 connected and joining and that there were no unauthorized
21 individuals within that area.

22 Q And was it all joining?

23 A Yes, sir.

24 Q And were there any unauthorized individuals inside?

25 A No -- no.

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1 Q Thank you, thank you.

2 THE COURT: But this was at 6:00 in the morning.

3 THE WITNESS: 6:00 in the morning.

4 Q Right.

5 A But it was completely sealed, there was no one inside
6 that perimeter, there may have been a jogger or two on the
7 sidewalk that we had to give some verbal direction to leave
8 and everyone left.

9 Q And then, so in general for the rest of that morning,
10 what did you do?

11 A After we checked the perimeter to make sure that it was
12 secure, I had gone back into the building and performed some
13 administrative tasks, assignments that I had, making sure
14 officers were getting the property to get helmets, making
15 sure post assignments were covered and then tracking, you
16 know, what the House and Senate were doing, getting ready to
17 come into session.

18 Q So why don't we jump to about noon and using the
19 diagram that is 101, can you explain to me what happened
20 around noon?

21 A So around 12:00, I had come out of the building to go
22 to the East Front to monitor the arrivals of the VIPs coming
23 into the Capitol for the day. When I was on the East Front,
24 I observed hundreds and hundreds and hundreds of
25 demonstrators that were on the other side of the bicycle

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1 rack, the area that was not closed on the East Front,
2 demonstrators were all along the bicycle rack. They were
3 actively demonstrating which means they were screaming,
4 holding signs, waving flags, and they were, like I said, just
5 lined up, shoulder to shoulder, as far as the eye could see
6 across the East Front demonstrating.

7 Q And, but staying on the correct side of the perimeter?

8 A That is correct.

9 Q Okay. And then what was going on on the West Front?

10 A So slightly before, slightly before 1:00 in the
11 afternoon, while I was outside on the East Front, we heard a
12 radio call by our officers that demonstrators had breached
13 the lower Pennsylvania Avenue Walkway and were making their
14 way up to the Capitol. At that point --

15 Q Can you show us on the diagram where that is, I don't
16 know if it has a touch on it.

17 A Can I touch?

18 Q Yeah.

19 A So the second green dot is, the green dot areas down
20 here are where we had bicycle rack and we had officers
21 positioned behind the bicycle rack to tell folks that the
22 area is in fact closed. It was at that point where somewhere
23 between 20 to 75 demonstrators had come to that fence line
24 and started to engage with those officers at that location.
25 At some point folks had grabbed onto the bicycle rack and

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1 were able to topple it over and move their way up
2 Pennsylvania Avenue Walkway.

3 MR. BURNHAM: Objection. Object to foundation, I
4 didn't hear the witness testify he was personally present for
5 this.

6 THE COURT: Mr. Disney, why don't you get a little
7 bit of foundation for whether he was personally present or
8 whether this was what was being reported to him.

9 Q Can you give us some insight into that, how do you know
10 this?

11 A That was -- that information was reported to me, again,
12 I was on the East Front when the call came out over the radio
13 that demonstrators had breached that perimeter point, started
14 making their way. The very next point I responded around to
15 the West Front and saw hundreds of demonstrators making their
16 way up that area I call Pennsylvania Walkway.

17 Q So you didn't see the actual breach of that barrier,
18 you came around after it occurred?

19 A That is correct.

20 Q Have you since watched Capitol Police video to see that
21 breach?

22 A Yes, I have.

23 MR. DISNEY: And your Honor, that's been stipulated
24 as being true and accurate.

25 Does that give you knowledge of how that

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1 penetration occurred?

2 A Yes, it does.

3 Q So with that, I'd like to be able to have it --

4 THE COURT: It wasn't an objection, he just asked
5 for a foundation, I think there's been a foundation.

6 MR. DISNEY: I'm sorry. I'm sorry.

7 So you heard it, came around, it had already
8 occurred, tell us kind of what happened next as far as what
9 was going on on the west side after people had penetrated
10 down by Peace Circle.

11 A So as the radio call went out for the breach, I ran
12 down the north side of the walkway to get to the West Front
13 and I saw officers running away because they said there's too
14 many of them and I directed these officers to come back, come
15 with me, we're not, you know, you're not turning around, come
16 back and get to this area. So I had responded down and I
17 walked around, got to the Lower West Terrace area --

18 Q Go ahead and use your finger to touch.

19 A Sorry. So I had come down, got to this Lower West
20 Terrace area right here and then I encountered, like I said,
21 what felt like hundreds of demonstrators coming up to this
22 first landing over here, and at that point we also had other
23 officers that were there and were trying to contain these
24 individuals from approaching the inaugural platform as well
25 as the staircases and the west side of the Capitol. At that

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1 point I directed individuals to start forming a perimeter, a
2 new perimeter, a new line, putting out additional bike rack
3 that had been -- that was nearby because of the construction,
4 and start to formulate some kind of line and direction to
5 have -- tell these demonstrators they're in unauthorized area
6 and they need to move back.

7 Q Would you agree that at some point in time, it was
8 pretty clear that you had lost control of the Capitol
9 grounds, that it had been breached?

10 A Yes. I can agree that several -- an hour and a half
11 approximately later, which felt like hours and hours to me
12 personally because I was there, it felt like forever, but I
13 believe, well, I know that at some point around, between 2
14 and 2:30, demonstrators were able to circumvent where we were
15 positioned and come up the west side of the Capitol and get
16 into the building.

17 Q Let me stop you before you do that. So if a person
18 comes up to the West Lawn of the Capitol and they're on the
19 West Lawn and the Lower West Terrace, can they get in, can
20 they get into the Capitol building itself?

21 A No, sir.

22 Q What's the only way then to get into the Capitol
23 Building itself?

24 A The only way to get into the Capitol Building is to go
25 through a visitor entrance which is located on the East Front

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1 of the building.

2 Q I'm sorry, that was a bad question. What's the only
3 way from the west, if you can't get into the building from
4 the West Lawn and from the Lower West Terrace, where would
5 you have to go to get entrance from the west side?

6 A There are no doors that are open to the public or
7 official --

8 Q I'm not talking about open to the public, I'm just
9 saying in general.

10 A Well, there are, again, on the west side of the
11 Capitol, there are doors, fire emergency doors, Lower West
12 Terrace door that I described earlier. These are, again, all
13 secured doors on the West Front and their primary usage is
14 for emergency egress only.

15 Q So ultimately, when you, when the West Lawn was
16 breached, the police formed a line up on the Lower West
17 Terrace, correct?

18 A Yes, sir.

19 Q And then you said that the crowd was able to basically
20 flank that line?

21 A That is correct.

22 Q Where did they go?

23 A So demonstrators, I observed demonstrators go to both
24 sides and start to make their way up the stairs, we call them
25 the House stairs on the west side and then the Senate

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1 stairs -- excuse me, the House stairs on the south side and
2 the Senate stairs on the north side, and they had moved
3 around --

4 Q Can you show us on the diagram?

5 A Yes, sir. So they started to come up the stairs which
6 are down here, and then come up here to get to the terrace
7 areas over here and over here, and there's, in between these
8 two green lines, this area right here, again, is the
9 construction of the inaugural platform. Also saw individuals
10 who climbed into the scaffolding which is located right here,
11 and here, and they climbed their way inside there and make
12 their way up towards the Capitol (indicating).

13 Q Ultimately, was the Capitol building itself breached?

14 A Yes, it was, sir.

15 Q What was the -- what door was the first door to be
16 breached?

17 A The first door to be breached was the Senate connecting
18 corridor wing door.

19 Q Thank you. And is that -- will we discover that's the
20 door that the defendant came in?

21 A From prior video that I've seen --

22 MR. BURNHAM: Objection.

23 THE COURT: I'll sustain that objection. Let's let
24 the evidence --

25 MR. DISNEY: Okay, all right.

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1 THE COURT: -- come rather than summarize what he
2 thinks the evidence will be.

3 Q So the Senate Wing Door was the first door to fall, is
4 that correct?

5 A Yes, sir.

6 Q Once people got into the building, what problems did
7 that create for Capitol Police to maintain control or to keep
8 people out of the building?

9 A If we have an unauthorized person breach our security,
10 the Congress is at significant danger and could no longer
11 legislate.

12 Q Okay. So I guess what I was getting at is you were
13 able to keep people outside the building, right?

14 A Yes, sir.

15 Q For some time?

16 A Yes, sir.

17 Q Once that Senate Wing Door was penetrated and people
18 were inside the building, did that make it more difficult to
19 secure the building?

20 A Absolutely.

21 Q How is that?

22 A That is because the Capitol Police had a significant
23 number of employees, almost all of them were outside either
24 on East Front or the West Front, remember, on the East Front
25 we still had hundreds if not thousands of demonstrators that

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1 were behind the bicycle rack and that had a significant
2 amount of Capitol Police tied up with that. Then with the
3 pursuing breach on the West Front, we had additional officers
4 come outside the building, as well as our civil disturbance
5 unit officers, forming to deal with what appeared to be
6 hundreds and hundreds of demonstrators who were coming from
7 the West Front. So now we had demonstrators on both sides of
8 the building. We did have Capitol Police inside the
9 building, again, as I mentioned, there are Capitol Police
10 inside the House Chamber and Senate Chamber, any time the
11 Congress is in session, as well as officers who are staffing
12 doors that are used as normal entry into the building, and we
13 have building patrols and other officers with the title
14 emergency responders who are available to take calls for
15 police services inside the building. So when the building is
16 breached, all of our resources have to go to locating that
17 individual or individuals, in order to make sure that they're
18 not a potential danger to the occupants inside the building.
19 At that point, the rest of the entire building would go into
20 a status we call lock down, where we're securing all of the
21 entrances, making sure that no one enters and leaves until we
22 find those individuals.

23 Q You said that not all the doors inside the Capitol were
24 manned?

25 A Again, that is correct, in a normal day, we do not

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1 staff every entrance to the building.

2 Q And so once the building was penetrated, did that allow
3 people to open up unmanned doors?

4 MR. BURNHAM: Objection to leading.

5 THE COURT: Just a second. Just a second. You
6 want to say something, Mr. Disney?

7 MR. DISNEY: I want to say if he knows.

8 THE COURT: I'll sustain the objection, just be
9 careful about leading questions. I think there's a lot that
10 can happen with leading questions on preliminary matters and
11 so forth but where we get into actual, significant events,
12 let's not lead the witness, let's let the witness testify to
13 nonleading questions. So that objection is sustained.

14 Q You talked about a large crowd forming on the west
15 side, and at this time, I would like to play, your Honor,
16 State's 401.

17 THE COURT: It's in evidence.

18 (Government's Exhibit 402 playing.)

19 THE COURT: This is 402.

20 MR. DISNEY: This is 402, your Honor. Can we stop
21 it for a second. Your Honor, I'm sorry, this is 402.

22 (Government's Exhibit 402 playing.)

23 Q Officer -- I'm sorry, Captain Patton, can you tell us
24 basically what we're seeing here.

25 A You're seeing hundreds and hundreds of demonstrators

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1 breach the West Front Lawn area and make their way towards
2 the Capitol. The area at the bottom of the screen is the top
3 area of the inaugural platform, the lower area is the area we
4 refer to as the Lower West Terrace Walkway, again, that goes
5 between the Pennsylvania Avenue Walkway and the Maryland
6 Walkway on the left-hand side.

7 Q And is the time at the bottom correct?

8 A Yes, sir.

9 Q And this is a time-lapsed video, correct?

10 A Yes, sir.

11 Q And so if we could just go ahead and play it.

12 (Government's Exhibit 402 playing.)

13 Q Thank you. Now, Captain Patton, do you ... we have a
14 stipulation that the Capitol grounds has cameras, is that
15 correct, CCTV cameras?

16 A Yes, they do.

17 Q And they're true and accurate?

18 A Yes, sir.

19 Q And have you viewed State -- Government's Exhibit 400
20 which is a compilation of the breaches on the west side of
21 the Capitol?

22 A I have, sir.

23 Q And is it true and accurate?

24 A Yes, it is, sir.

25 MR. DISNEY: Your Honor, we'd ask that we play

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1 Government's 401.

2 THE COURT: 401 or 400? 400 is the compilation I
3 think.

4 MR. DISNEY: Yeah, say that again, your Honor?

5 THE COURT: On my exhibit list from you folks, it
6 looks like 400 is the compilation, is that what you're going
7 to play?

8 MR. DISNEY: Your Honor, we had a misnumbering,
9 it's -- I will, we will get that corrected.

10 THE COURT: What did we just look at then? What
11 was that time lapse, what number was that?

12 MS. AYERS-PEREZ: The time lapse on our list is 402
13 but the first four videos in the 400 series were misnumbered,
14 they were one up so 400 was 401, 401 was 402 just for those
15 first four videos.

16 THE COURT: So there is no 400?

17 MS. AYERS-PEREZ: Correct, your Honor.

18 THE COURT: So 400 is 401?

19 MS. AYERS-PEREZ: Correct.

20 THE COURT: 401 is 402?

21 MS. AYERS-PEREZ: Correct.

22 THE COURT: 402 is?

23 MS. AYERS-PEREZ: 403.

24 THE COURT: 403 is?

25 MS. AYERS-PEREZ: 404. And then what we've done is

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1 404 is part of our larger exhibit, we just renumbered that
2 421.

3 THE COURT: So 404 is 421?

4 MS. AYERS-PEREZ: Yes, everything else is correct.
5 I do apologize for that, your Honor.

6 THE COURT: All right. Mr. Burnham, do you
7 understand what the Government has done in terms of
8 renumbering, are you okay with it?

9 MR. BURNHAM: Yes, I follow, your Honor.

10 THE COURT: All right, thank you.

11 MS. AYERS-PEREZ: Thank you.

12 Q So the compilation that I was talking about on the west
13 side is 401 and have you seen that?

14 A Yes, sir.

15 Q And does it true and accurately depict the breaches on
16 the west side of the Capitol?

17 A Yes, sir.

18 Q Your Honor, so at this time I'd play 401, it's
19 approximately six minutes.

20 THE COURT: It's already been admitted into
21 evidence, preadmitted, so you can play it.

22 MR. DISNEY: Thank you.

23 (Government Exhibit 401 playing.)

24 Q At the top of the screen, the pinnacle, the white, what
25 is that?

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1 A That's Peace Circle, sir.

2 THE COURT: And there are officers there trying to
3 maintain the perimeter?

4 THE WITNESS: Oh, yes, sir, right down there in
5 front of that walkover stage we have officers positioned
6 behind bicycle rack and you can see the demonstrators are
7 coming up from Pennsylvania Avenue to that point and you can
8 see officers running on the grass to go to that location.

9 Q And in the forefront of the picture, is that
10 construction with equipment from the stage?

11 A Correct, that's the construction for the stage, those
12 pieces of equipment, and we had seen some construction
13 workers earlier on in the video come through. Now you're
14 starting to see people breach that point, and at that point a
15 radio call had gone over the radio, that demonstrators had
16 breached the Pennsylvania Avenue bike rack and made their way
17 up the Pennsylvania Avenue Walkway.

18 Q Is this approximately the time that you came around to
19 the East Front?

20 A Correct, I started to come down the walkway which would
21 be on the right-hand side to come across this walkway to meet
22 this, you can see officers are coming around to go back up to
23 the top.

24 A And you can see there that there's people ripping the
25 snow fencing down on the left-hand side by the walkway, it's

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1 little hard to see because the grass is green, the snow
2 fencing is green, you can see that walkway, that area. And
3 then this is --

4 Q What's the view we see here?

5 A Pardon me, sir?

6 Q What's this view?

7 A This is the view from Pennsylvania as if I was standing
8 on the Peace Memorial and I was looking at the, looking at
9 the bike rack, around the -- so the first lower bike rack
10 seems to be around Peace Circle, then you have the street
11 where all these demonstrators are and then there is a line
12 where our officers are behind those bike rack preventing
13 people from going up this walkway that you see.

14 THE COURT: This is the same breach, just from a
15 different angle?

16 THE WITNESS: Yes, sir.

17 Q Yes. Down at the forefront we see that, is that the
18 bicycle rack that you're talking about?

19 A That's an example of bicycle rack that was used and
20 then the white stairs that you see on the other side of those
21 white squares are language that says area closed by order of
22 the Capitol Police Board.

23 (Government's Exhibit 401 continues playing.)

24 A And then from the video you can start to see the
25 officers are getting pushed back and demonstrators are

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1 starting to make their way up the Pennsylvania Avenue Walkway
2 towards the West Front of the Capitol.

3 Q We talked about there being a stairway leading up to
4 the terrace, is this what we're seeing, that stairway?

5 A Yes, sir, you're seeing a camera from the Senate side
6 of the Capitol looking at the stairway and then that white
7 area with the two doors is an enclosure for a grandstand that
8 is connected to the inaugural platform.

9 Q This is 2:09 p.m.?

10 A Yes, sir.

11 Q Looks like things are being thrown?

12 A Yes, sir, I was personally there on the West Front and
13 that day I was -- people threw batteries, bike rack at me,
14 sprayed me with mace, pepper spray, bear spray.

15 MR. BURNHAM: Objection, your Honor. Objection as
16 to relevance, misbehavior by other persons.

17 THE COURT: Overruled.

18 Q The stairs have now been overrun in this picture?

19 A Yes, they have.

20 Q Now can we pause it just for a second. You talked
21 about the Senate Wing Door, is that door shown here?

22 A Yes, it is, it's in the center of the video.

23 Q And at 2:11, it looks to be intact, is that correct?

24 A Yes, sir.

25 Q Okay, thank you, go ahead.

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1 (Government's Exhibit 401 continues playing.)

2 Q Can you tell us what we're seeing here now?

3 A It looks like we're about to have somebody come through
4 a window, we have an officer that comes into the scene right
5 here, I believe he discharges his OC spray at the individual,
6 and then we have demonstrators make their way into this area
7 that we're calling the Senate connecting corridor through the
8 window. At the same time we have individuals breaking the
9 other window trying to breach the building as well. The
10 individual in the middle of the screen is trying to release
11 the door. That door does have fire equipment on it so that
12 red sign says if the door is depressed for 45 seconds it will
13 eventually release but it will sound an alarm. Those two
14 individuals just kicked open that door and now we have
15 individuals coming into the Capitol.

16 Q This is the initial breach of the Senate Wing Door?

17 A Yes, sir. So again, at this point, you can no longer
18 have legislative business in the Capitol because the
19 Capitol's breached.

20 Q Describe what's going on at the Senate Wing Door at
21 2:28.

22 A At 2:28, myself is in the center of the picture, I had
23 come into the building through the south, through the Senate
24 Carriage entrance and I'm directing officers to make sure
25 that individuals are being pushed back out of the Senate

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1 Wing, and I have, I had just come from making sure that the
2 Vice President was evacuated. So we do have a good showing
3 of Capitol Police, we do have demonstrators that are leaving,
4 again, we're pushing them back out the way that they came in,
5 and we're bringing more reinforcements of officers to get
6 people out of the area. I'm wearing a black jacket and have
7 the discernible oval --

8 Q What door is this that we're looking at?

9 A This is another emergency exit on the Senate Wing
10 referred to as the Parliamentarian door because the
11 Parliamentarian's office is nearby.

12 Q How close is it to the Senate Wing Door?

13 A It is -- it's around the corner to that Senate wing.

14 Q Okay. Thank you. Now we're going back to the Senate
15 Wing Door?

16 A Yes, sir, and I had left the area, by the way, at this
17 time.

18 Q Looks like at 2:46, would you agree that you at least
19 have some control over the door?

20 A Yes, there does look like some semblance of order at
21 this point. But again, the windows, you have demonstrators
22 in the windows, the door is still open at this point so you
23 have officers that are engaging people in three different
24 areas.

25 Q And are there rioters still within the building?

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1 A I don't have knowledge of that, specifically, I could
2 not give you a count of how many rioters or demonstrators
3 were still in the building at that point.

4 A I can tell you from experience that the demonstrators
5 are pleading with the police to let them in the building.
6 The police officers are all telling them that the building is
7 closed and that they cannot enter.

8 MR. BURNHAM: Objection, no question pending.

9 THE COURT: Overruled.

10 A You're seeing demonstrators hit the police with poles
11 and they're pushing their way into the building.

12 Q And it appears -- am I correct that on the left it
13 appears that there are people in the building?

14 A Yes, from this viewpoint, I can see that there are
15 people down the hallway there, that goes towards the center
16 of the building which we call the Crypt on the first floor.
17 So here's the challenge. We have demonstrators trying to get
18 out of the building and demonstrators trying to get into the
19 building.

20 (Government's Exhibit 401 completed.)

21 MR. DISNEY: Thank you. Your Honor, we're now
22 going to turn from the general breach of the Capitol to the
23 specific conduct of the defendant. Would you like to do that
24 now or would you like to break for lunch? I'm not sure if
25 your --

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1 THE COURT: No, keep going. We've got another 20
2 minutes before we break.

3 MR. DISNEY: Your Honor, we have an Exhibit 708
4 which is a stipulation of the parties regarding the
5 defendant's presence in and around the Capitol, and I would
6 ask that 708 be admitted.

7 MR. BURNHAM: No objection.

8 THE COURT: Thank you, Mr. Burnham, 708 is
9 admitted.

10 MR. DISNEY: And your Honor, we have a -- your
11 Honor, what we have is the Exhibit 104 which is a model of
12 the Capitol, and inside that model are the various CCTV and
13 other videos. All of them will show the defendant, and what
14 I would propose is I simply call out the exhibit number, have
15 it played, and then note the time that the defendant appears
16 on the video.

17 THE COURT: Sounds acceptable to me, okay with you,
18 Mr. Burnham?

19 MR. BURNHAM: Fine, your Honor.

20 THE COURT: Proceed, Mr. Disney.

21 MR. DISNEY: Thank you. Is that going to get any
22 larger? Your Honor, can we see that if you leave it how it
23 is now?

24 THE COURT: I'm sorry?

25 MR. DISNEY: Can you see the exhibit how it is now?

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1 THE COURT: I can see it. It's pretty small, but I
2 can see it.

3 MR. DISNEY: If we can just have the court's
4 patience for a second while we try to get this.

5 THE COURT: It hasn't grown.

6 MR. DISNEY: Seems to be getting smaller, your
7 Honor.

8 THE COURT: It's disappeared.

9 MR. DISNEY: Your Honor, I do know that this is
10 going to take longer than 20 minutes to go through. Would
11 the Court entertain --

12 THE COURT: Well, we can take an earlier break if
13 that's not going to affect the availability of witnesses and
14 you can get everything set up, ready to go when we resume at
15 1:00 p.m.

16 MR. DISNEY: Thank you.

17 THE COURT: All right. So we'll see you at 1:00.

18 (Luncheon recess, 12:17 p.m. to 1:18 p.m.)

19 (Open Court.)

20 THE COURT: All right. Captain Patton, good
21 afternoon. I remind you you're still under oath.
22 Mr. Disney.

23 MR. DISNEY: Thank you, your Honor. Your Honor, we
24 had a glitch, we were playing the programs through -- I'm
25 sorry, we were playing the videos through a certain program,

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1 that program was malfunctioning, we are just going to play
2 the videos themselves, they've already been admitted so I'll
3 just call out the exhibit and then play it as we had
4 discussed.

5 THE COURT: All right.

6 Q Captain Patton, I want to go through some videos the
7 defendant has stipulated as to his identity, so we'll go
8 through these videos and stop and have, like we said, I'll
9 mark the time to show the defendant, but if we -- you had
10 talked about a rally at the Ellipse, is that correct?

11 A You're asking if I know about the rally, the Stop the
12 Steal Rally at the Ellipse of the White House, I know about
13 it, yes, sir.

14 Q Your Honor, I play 501.

15 (Government's Exhibit 501 played.)

16 Q Where was that location?

17 A That area was near the Washington Monument and the
18 African-American Museum across from the White House.

19 Q And if we could go to 501A. And your Honor, the
20 defendant, by stipulation, is in the lower left corner where
21 the arrow is showing wearing a stocking cap and a flak
22 jacket.

23 THE COURT: I see him.

24 MR. DISNEY: Okay, thank you.

25 Q Then if we could go to 502.

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1 (Government's Exhibit 502 played.)

2 Q Do you recognize this location?

3 A Yes, it looks like Constitution Avenue.

4 MR. DISNEY: And your Honor, if we could just back
5 up for a second?

6 THE COURT: I saw him pass by, before.

7 MR. DISNEY: Okay, thank you, your Honor.

8 Q If we could go to 502A. We'll go quicker, I got to
9 just get the pace of what we're doing. That's the defendant
10 in the bottom right?

11 A It appears to be.

12 Q Thank you. And if we could go to Exhibit 503.

13 (Government Exhibit 503 played.)

14 Q And do you recognize that area?

15 A I do, sir.

16 Q And where is that?

17 A These are the Senate steps going from the Lower West
18 Terrace to the Upper West Terrace immediately to the left of
19 the inaugural riser, that's the scaffolding you see on your
20 right-hand side.

21 MR. DISNEY: And for the record, your Honor, the
22 defendant is reaching for the scaffolding in 503. At 38
23 seconds. If we could go to 411. I'm sorry?

24 MR. BURNHAM: I'm sorry, I have an objection. I
25 think counsel just stated the defendant is reaching for the

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1 scaffolding -- I'll start over. My objection is counsel just
2 stated I guess as a part of a question that the defendant is
3 reaching for the scaffolding and that's not something we --
4 first of all, testimony of counsel --

5 THE COURT: That's just what he says, that's not
6 testimony in the record.

7 MR. BURNHAM: And that's not part of -- that was
8 not part of our stipulation, that he was reaching for the
9 scaffolding, we're not disputing that's his helmet there,
10 but --

11 THE COURT: He's just trying to identify through
12 his words, I understand it's not evidence.

13 MR. BURNHAM: Thank you.

14 Q 411.

15 (Government's Exhibit 411 playing.)

16 Q And Officer, can you see the defendant in this photo --
17 or this video, I'm sorry?

18 A I do, sir, he's in the center coming through the
19 doorway of the Senate Wing corridor.

20 Q Thank you.

21 THE COURT: And the time?

22 Q The time is -- what time?

23 A 2:24:15 p.m.

24 Q 2:24:15?

25 A 2:24, the video depicts that it's 2:24:15 p.m. on

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2 Q And that's the Senate Wing Door?

3 A That's the Senate Wing connecting corridor door.

4 Q We talked about there being two breaches of the Senate
5 Wing Door; is this the first breach or the second?

6 A This appears to be the first breach of the door.

7 Q Thank you.

8 A The initial breach, excuse me.

9 Q The initial breach?

10 THE COURT: When you say breach, this is after the
11 first breach?

12 THE WITNESS: This is the first breach at 2:24 of
13 those doors.

14 THE COURT: 2:24 was the time of the first breach?

15 MR. DISNEY: I can clarify that, Judge.

16 Q What time was the Senate Wing Door initially broken
17 open?

18 A I think sometime between 2:12 and 2:24.

19 MR. DISNEY: Your Honor, the video that we showed
20 before lunch showed it at 2:12.

21 THE COURT: Any disagreement with that?

22 MR. BURNHAM: No, your Honor, 2:12 is, we agree
23 that was when it was first breached.

24 THE COURT: That was my recollection as well, thank
25 you.

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1 Q And the defendant's coming in then at 2:24?

2 A Yes, according to the video.

3 Q Thank you. If we could go to 420.

4 (Government's Exhibit 420 playing.)

5 THE COURT: I'm sorry, what exhibit is this?

6 MR. DISNEY: 420, your Honor.

7 THE COURT: 420 has not been identified as an
8 exhibit in evidence yet.

9 MR. DISNEY: I'm sorry.

10 THE COURT: You told me 400 through 419, I believe.
11 I don't think 420 is in evidence. Do you have it,
12 Mr. Bradley?

13 THE CLERK: No.

14 MR. DISNEY: I'll clarify that.

15 THE COURT: Now the numbers were, everything was
16 renumbered in the beginning of the 400 series, I don't know
17 what's happened there.

18 Q Let me just, before you play that ... your Honor, we
19 would move to admit the exhibit that's showing which is 420.

20 THE COURT: This is 420, all right. Any objection?

21 MR. BURNHAM: No objection to 420.

22 THE COURT: 420 is admitted, and may be shown.

23 Q Thank you. And Officer -- or I'm sorry, Captain
24 Patton, can you tell us what area we're looking at here?

25 A We're looking at a camera from the Capitol Police

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1 that's facing toward the memorial door of the first floor of
2 the Capitol.

3 Q And go ahead.

4 (Government's Exhibit 420 playing.)

5 MR. DISNEY: And your Honor, the defendant is shown
6 in the bottom left, it's a little dark.

7 THE COURT: I see him.

8 MR. DISNEY: Thank you.

9 Q Next could we go to 504.

10 (Government's Exhibit 504 playing.)

11 Q And stop it for a second. Do you recognize this
12 location?

13 A I do, sir.

14 Q What is this location?

15 A This is the stairway from that atrium that goes up from
16 the first floor to the second floor. At the top of the
17 staircase is the entryway to the Rotunda, the Speaker of the
18 House's private offices, as well as Statuary Hall.

19 Q Who was the Speaker of the House at the time?

20 A Representative Nancy Pelosi.

21 Q Thank you. And if we could go ahead and play 504.

22 (Government's Exhibit 504 playing.)

23 Q And it appears that the -- am I correct that it appears
24 the defendant's shown on screen now at 32 -- 33 seconds?

25 A It appears to me that the defendant's listed on the

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1 right-hand side with the helmet on.

2 Q And if we could go to 504A which I believe --

3 THE COURT: Just a second. Well, go ahead and show
4 me 504A.

5 Q Do you see the defendant in 504A?

6 A I do, sir.

7 Q Where in the photo is he?

8 A He appears to be in the upper right-hand corner of the
9 photo.

10 THE COURT: Just for clarification for the record,
11 the exhibit that was 504 was described as the stairs to the
12 Speaker's office, but the depiction of the defendant is in a
13 hallway at the bottom leading to the stairs, not on the
14 stairs, correct?

15 THE WITNESS: Correct, sir.

16 THE COURT: Go ahead.

17 Q We would agree with that, thank you, Judge. And if we
18 could go to then 505.

19 (Government's Exhibit 505 playing.)

20 Q And if we could pause this.

21 THE COURT: Too late.

22 Q Do you recognize this location?

23 A Yes, that was the area outside Speaker Pelosi's private
24 offices.

25 Q And so the stairs that we saw in 504, if you ascended

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1 those, then you would be in this location?

2 A Yes, that's like I said earlier, based on when you get
3 to the top of the stairs, that's an open area that addresses
4 that hallway.

5 Q Thank you. And then we'll just stop it when we see.
6 And it's stopped at three seconds into the video. Do you see
7 the defendant?

8 A I do.

9 Q And wearing the helmet?

10 A Wearing the helmet next to the yellow flag.

11 Q Let's go ahead and play.

12 (Government's Exhibit 505 played.)

13 THE COURT: Do we have a time on this, can you see
14 the time in the upper left?

15 MR. DISNEY: No, your Honor, this is an open source
16 video and we don't know the time.

17 THE COURT: There's no time.

18 Q Thank you. Then if we could play 506.

19 (Government's Exhibit 506 played.)

20 Q At 22 seconds, do you see the defendant in this video?

21 A I do, he appears to be behind the individual with an
22 orange hat.

23 Q Thank you. Next we'll go to 412. And can you stop it.
24 First of all, do you recognize the location shown in 412?

25 A Yes, this is the Rotunda of the United States Capitol.

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1 Q And what time is it now?

2 A According to the time stamp, it is 2:35 and 09 seconds
3 p.m.

4 Q The Senate Wing Door is on the first floor of the
5 Capitol?

6 A That's correct.

7 Q And then the stairs that we saw would take you to the
8 second floor, correct?

9 A Correct.

10 Q And the Rotunda, is it on the first or second floor?

11 A The Rotunda's on the second floor.

12 Q And the time is now 2:35, correct?

13 A Correct.

14 Q Okay. Go ahead. And we'll go ahead and play 412 and
15 just stop it when ...

16 (Government's Exhibit 412 playing.)

17 Q Do you see the individual to the bottom left, do you
18 see the defendant in this photo?

19 A Yeah, if you're referring to the bottom left-hand
20 corner where there's a gentleman touching his hat with a
21 white shirt, I see the defendant standing next to him with
22 the green helmet.

23 Q Thank you. We'll just go ahead and play this.

24 (Government's Exhibit 412 completed.)

25 Q Thank you. If we could go to now 413.

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1 (Government's Exhibit 413 playing.)

2 Q And if we could stop it. Can you tell me the location?

3 A So this is a camera view of the area looking at the
4 Rotunda doors to the Capitol, Rotunda doors, if you go out
5 those doors you'll be on the East Front of the Capitol, and
6 this is on the second floor level.

7 Q And --

8 A Right outside the Rotunda.

9 Q And the view that we're seeing are people inside the
10 Capitol, correct?

11 A That is correct.

12 Q But there also appears to be people outside?

13 A That's correct.

14 Q And you said it was on the second floor, can you just
15 explain how those people are on the second floor and still on
16 the outside?

17 A So, on the outside of the doors that you see at the top
18 of the screen are steps, we call those the Rotunda steps that
19 take you down to the plaza. Those steps are also restricted
20 to members of Congress and only authorized individuals.

21 Q Thank you. We'll just go ahead and play this and stop
22 it.

23 (Government's Exhibit 413 playing.)

24 Q Can we stop it. Do you see the defendant enter the
25 picture from the bottom?

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1 A If you look at the bottom of the picture, there's a
2 gentleman with a red hat and then in front of him there's a
3 camouflaged hat individual and then there's a gentleman to
4 the left-hand side with a green helmet, that looks like the
5 defendant.

6 Q Thank you.

7 (Government's Exhibit 413 completed.)

8 Q And if we could go to 418. And what's this view here?

9 A So this view is the opposite of what you just saw,
10 right below, it's not in the screen, are the Rotunda doors
11 that just came open, so this door is looking back into the
12 Rotunda of the Capitol, and that is the area now at the top
13 of the screen, and on the left-hand side are stairs that will
14 take you up to the third floor of the Capitol which is a
15 connecting corridor between the two chambers, the House
16 Chamber and the Senate Chambers.

17 Q And if we could, you see the defendant shown in this
18 picture?

19 A On the right-hand side of the screen, there are two
20 people with red hats, right above the one gentleman with the
21 red hat is a gentleman with a green helmet and that appears
22 to be the defendant.

23 Q Thank you. Can we go to 510 now.

24 (Government's Exhibit 510 playing.)

25 Q And stop it for a second. What's this location?

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1 THE COURT: What number is this?

2 MR. DISNEY: 510.

3 THE COURT: 510 is not in evidence.

4 MR. DISNEY: I'm sorry, Judge. We'll skip this
5 one, Judge. If we could go to 416.

6 THE COURT: 415?

7 MR. DISNEY: 16.

8 (Government's Exhibit 416 playing.)

9 Q If we could pause it for a second. Can you tell me
10 what area of the Capitol this is?

11 A Okay. So again, this is not a Capitol Police video,
12 looks like an open source video viewing the Rotunda doors and
13 those doors are on the -- you could see them on the left-hand
14 side of the screen.

15 THE COURT: Make sure we're on the right exhibit.
16 416 on the Government's exhibit list is described as gallery
17 stairs. Would that be a correct description of this video?

18 THE WITNESS: On the right-hand side, your Honor,
19 is stairs going up to the galleries on the third floor.

20 MR. DISNEY: I'm sorry, your Honor, so this is 510.

21 THE COURT: This is 5 what?

22 MR. DISNEY: 10.

23 THE COURT: 510. 510 which is not yet in evidence
24 is described as Rotunda door interior video.

25 MR. DISNEY: We would move to admit 510.

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1 MR. BURNHAM: No objection to 510.

2 THE COURT: 510 is admitted without objection.

3 (Government's Exhibit 510 playing.)

4 Q At 2:17, do you see the defendant in this video?

5 A I do, I see the individual in the bottom of the screen
6 coming up the stairs with the green helmet.

7 Q And what are those stairs called?

8 A Those stairs are stairs that lead you to the third
9 floor gallery, they're Rotunda stairs, interior stairs near
10 the Rotunda that take you to the third floor gallery.

11 Q When you say gallery, what are you talking about?

12 A This is new area, this is new construction, this is
13 called -- this is part of the Capitol Visitors Center. When
14 you go up to the landing now, when you get to the top of
15 these stairs, there will be a connecting corridor because we
16 are essentially in the center of the building, correct, so
17 you'll be in a corridor that will allow you to either go to
18 the House Gallery or the Senate Gallery.

19 Q So the gallery meaning whichever way you go, you can
20 view the Senate or the House?

21 A Correct, sir.

22 (Government's Exhibit 510 completed.)

23 MR. DISNEY: Your Honor, the next exhibit we have
24 is 511 and it was not admitted and we would move to admit it.

25 THE COURT: Any objection to 511, Mr. Burnham?

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1 MR. BURNHAM: No, your Honor.

2 THE COURT: Thank you. 511 is admitted.

3 (Government's Exhibit 511 playing.)

4 Q Can you tell us what we're looking at here?

5 A Now, at this point, that video before it shut off was
6 showing the Rotunda doors had been opened on the right-hand
7 side, and then on the left-hand side would be a walkway to go
8 back to the Rotunda, that view appeared to be from someone
9 standing on the steps.

10 Q Thank you.

11 (Government's Exhibit 511 completed.)

12 Q If we could now go to 416, and if we could pause that.
13 Do you recognize this location?

14 A Yes, I do.

15 Q What is this?

16 A This is a view from the third floor to the middle
17 landing of the previous video that showed the staircase going
18 up from the Rotunda, that Rotunda foyer area that takes you
19 to the third floor.

20 Q And can you note the time for us?

21 A It's 2:35:13 p.m.

22 Q Okay, thank you. Do you see the individual going to
23 the left?

24 A I do.

25 Q Is that the defendant?

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1 A That appears to be the defendant with the green helmet
2 on.

3 Q If we can now go to 415.

4 (Government's Exhibit 415 playing.)

5 Q And stop that.

6 THE COURT: What are we looking at now?

7 MR. DISNEY: 415, your Honor.

8 THE COURT: 415?

9 Q I'm sorry. So if we can play 415, do you recognize
10 this area?

11 A I do, sir.

12 Q And what is it?

13 A This is another connecting corridor that takes you
14 from -- takes you to the Senate Galleries on the third floor,
15 on the right-hand side is the old Senate Chamber, you see the
16 shutters across the hallway.

17 Q I'm sorry, you talked about those gallery steps,
18 there's a corridor that could go either way?

19 A Correct.

20 Q And this, it appears, is that the defendant shown in
21 the picture in 2:40:52?

22 A That is correct, in front of the person with the USA
23 sweatshirt.

24 Q And is your testimony is that he's going towards the
25 direction of the Senate Gallery?

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1 A That is correct.

2 Q Thank you.

3 THE COURT: On the exhibit list, this is described
4 as east corridor, would that be an accurate description?

5 THE WITNESS: Yes, sir, that corridor is on the
6 East Front of the building.

7 THE COURT: Thank you.

8 THE WITNESS: Yes, sir.

9 Q Then if we could go to 414.

10 (Government's Exhibit 414 playing.)

11 Q And stop it. What are we looking at here?

12 A So this camera is over the -- what we call the press
13 gallery so that's behind us on the left-hand side is the
14 office of the Secretary of the Senate and then straight ahead
15 is an elevator, Senators only elevator and that there appears
16 to be a person who's getting ready to come in from the
17 previous hallway coming down this corridor so this is a third
18 floor corridor directly outside the Senate Gallery.

19 Q So if I -- if that door that says gallery door
20 number 1, if you go into it, what would you see?

21 A You would be inside the Senate Chamber.

22 Q On the upper level?

23 A On the upper level, so the Senate Chamber has two
24 levels, the main level where the Senators sit that is on the
25 second floor, the upper area is referred to as the Senate

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1 Galleries that's on the third floor, and again, the
2 galleries, that's where members and their invited guests, the
3 public would be allowed to come view a Senate session, but
4 again, at this time, the galleries are secured and closed.

5 Q Thank you. And the individual that just walked across,
6 was that the defendant?

7 A I can't tell from this vantage point, sir.

8 Q Okay.

9 A That individual does appear to be the defendant because
10 I can tell that he has flex cuffs in his hand.

11 Q Thank you. Now if we could go to 421. And please tell
12 us what area of the Capitol this is.

13 A So again --

14 THE COURT: What -- 421?

15 MR. DISNEY: Yes, sir.

16 THE COURT: Not only is it not in evidence, it's
17 not on my exhibit list.

18 THE CLERK: Nor mine.

19 MR. DISNEY: All right, we'll skip that one. If we
20 could go to 419.

21 (Government's Exhibit 419 playing.)

22 Q And pause. So what area are we looking at here?

23 A So we are looking at the area right outside the Senate
24 Galleries, right at the top right-hand of the screen is an
25 enhanced security portal, that's a body scanner that all

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1 individuals would go into the galleries would go through
2 prior to going into the galleries.

3 Q Even after going through the security at the --

4 A At the main door, sir, yes, sir, that's secondary
5 screening.

6 Q And the defendant is right in front of that scanner?

7 A That is correct.

8 Q If we could go ahead and play.

9 (Government's Exhibit 419 playing.)

10 Q If we could stop. That door that the defendant is in
11 front of now, what does that lead to?

12 A That also leads to the Senate Gallery on the third
13 floor.

14 Q Thank you.

15 (Government's Exhibit 419 completed.)

16 Q And this is at approximately 2:43?

17 A That is correct, sir.

18 Q Does that appear to be the defendant who's now exited
19 the Senate Gallery?

20 A Yes, right next to the individual with the American
21 flag, I can see that the individual with the green helmet and
22 the flex cuffs in his right hand appear to be the defendant.

23 Q Thank you. If you go to 507. And can you tell us, we
24 saw video earlier of Secretary -- I'm sorry, Vice President
25 Pence leaving a door. Can you tell us what we're seeing in

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1 this picture?

2 A So on the right-hand side, first of all we're back on
3 the second floor, and we're right outside the Senate Lobby,
4 those doors on your right-hand side are also referred to as
5 the Vice President doors because immediately on the inside of
6 that door to your right hand is the Vice President's
7 ceremonial office.

8 Q Is that -- I'm sorry.

9 A I'm sorry.

10 Q Is that the door that Vice President Pence was escorted
11 out of earlier?

12 A That is correct.

13 THE COURT: And on the exhibit list, 507, which I
14 think is what you believe we're on? Is listed as inside
15 Senate Gallery video. Would that be accurate?

16 THE WITNESS: No, not for this video, sir.

17 THE COURT: So what exhibit is this?

18 MR. DISNEY: I'll ... all right. I'm sorry, it's
19 417.

20 THE COURT: 417, Senate Chamber?

21 A If you're -- if I'm following your curser, 417 looks to
22 say Senate Lobby CCTV and that is directly outside the Senate
23 Lobby, there's no cameras inside the Senate Lobby so that
24 would be accurate, outside the Senate Lobby if that's --

25 THE COURT: So this is 417?

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1 MR. DISNEY: Yes, your Honor.

2 THE COURT: All right.

3 (Government's Exhibit 417 playing.)

4 Q And if we could pause. Excuse me. Can you describe
5 the actions of what appears to be the defendant in 417?

6 THE COURT: Well, first of all, is that the
7 defendant?

8 THE WITNESS: So to me that appears to be the
9 defendant wearing the green helmet and wearing the flex cuffs
10 now in his appears left hand and he appears to have some set
11 of keys and is trying to unlock the secured lobby doors that
12 are, if you were to go through those doors, would give him
13 access to the Senate floor.

14 Q And what time is this?

15 A This is at 2:47:14 p.m.

16 MR. DISNEY: Your Honor, may I approach the
17 witness?

18 THE COURT: You may. You said give him access to
19 the Senate floor, does it also give him access to what we've
20 called the Vice President's office?

21 MR. DISNEY: Yes, so the Senate Lobby is connecting
22 behind the Senate Chamber, which we call that area the Senate
23 floor too, so once you go through those doors, the Vice
24 President's office is on the right-hand side and the entrance
25 to the floor is on the left-hand side, so, yes, sir, both

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1 doors.

2 THE COURT: All right. You may approach the
3 witness.

4 Q I'm going to show you what's been marked as 403A and we
5 had a witness write on it earlier, I'm just wonder -- I'd ask
6 you just to denote the time the defendant is at the door as
7 shown in the exhibit on the screen.

8 THE COURT: The exhibit on the screen?

9 MR. DISNEY: Yes, sir, and that's 417.

10 THE COURT: Captain Patton, the exhibit on the
11 screen, what's the time shown?

12 THE WITNESS: So the -- the time on the screen is
13 2:47:14 p.m.

14 THE COURT: Thank you.

15 THE WITNESS: And I've just written that underneath
16 the picture, on top of the picture that is -- appears to be a
17 screenshot of this video.

18 THE COURT: Okay. What number exhibit is this?

19 MR. DISNEY: 403A, I haven't admitted it yet.

20 THE COURT: I didn't think 403A was the screenshot
21 that showed the defendant at the door.

22 MR. DISNEY: Can I show it to counsel now?

23 THE COURT: And you had a time marked on it
24 earlier.

25 MR. DISNEY: I did, I do.

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1 THE COURT: And now this is -- you have two times
2 marked on this?

3 MR. DISNEY: Well, the first one shows, what I'm
4 trying to demonstrate is the time the Vice --

5 THE COURT: Oh, there are two different -- see,
6 I've never seen the exhibit, you're using the exhibit and I
7 haven't seen it.

8 MR. DISNEY: I haven't admitted it yet.

9 THE COURT: Well, that's why, but I haven't seen it
10 so it's actually two different pictures and now you're
11 putting two different times on, one for one picture and one
12 for the other picture.

13 MR. DISNEY: Yes.

14 THE COURT: Now I understand, but that was never
15 explained.

16 MR. DISNEY: Thank you.

17 THE COURT: Thank you.

18 MR. DISNEY: Your Honor, I move to admit 403A which
19 is both of them on the -- shows the Senate Lobby door, the
20 left-hand picture shows the Vice President leaving at 2:26 as
21 noted by the witness, the right-hand side shows the defendant
22 trying to enter the door at 2:47 p.m.

23 THE COURT: Any objection, Mr. Burnham?

24 MR. BURNHAM: No, your Honor.

25 THE COURT: All right. And the times given, the

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1 second time was supplied by Captain Patton, the first time
2 was supplied by Agent Glavey.

3 MR. DISNEY: Yes. Thank you.

4 THE COURT: You should -- that's the original
5 exhibit, you should hold it.

6 MR. DISNEY: Your Honor, if we could next go to
7 507.

8 (Government's Exhibit 507 playing.)

9 Q What is the location in the Capitol that we're seeing
10 here?

11 A That individual's inside the Senate Gallery on the
12 third floor. I can tell this because in the backdrop I can
13 see the Senate floor, I can see the presiding officer's chair
14 on the left-hand side of that individual.

15 Q Thank you. And if we could continue on.

16 (Government's Exhibit 507 playing.)

17 Q Do you see the defendant in this exhibit?

18 A I do see the defendant behind the American flag wearing
19 the green helmet right below the light.

20 Q The smaller American flag?

21 A The smaller American flag.

22 Q Thank you.

23 (Government's Exhibit 507 completed.)

24 MR. DISNEY: Your Honor, if we could next go to
25 611.

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1 THE COURT: What number?

2 MR. DISNEY: 611.

3 THE COURT: It's not yet in evidence.

4 MR. DISNEY: I would ask that 611 be admitted in
5 evidence. I'm sorry, Judge, we just have a little trouble
6 with the program, but --

7 THE COURT: I'm observing that.

8 MR. DISNEY: -- I would ask that 509 --

9 THE COURT: 511?

10 MR. DISNEY: 509.

11 THE COURT: I'm sorry, what?

12 MR. DISNEY: 509.

13 THE COURT: 509. That is not yet in evidence.

14 MR. DISNEY: We would ask that 509 and 611 be
15 admitted in evidence.

16 MR. BURNHAM: No objection, your Honor.

17 THE COURT: 509 and 611 are admitted.

18 THE COURT: And this is 509?

19 MR. DISNEY: Yes, your Honor.

20 (Government's Exhibit 509 playing.)

21 Q Can you stop it. The person speaking, can you identify
22 him?

23 A Yes, that appears to be the defendant again with the
24 green helmet and the flex cuffs in his left hand.

25 (Government's Exhibit 509 completed.)

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1 Q And now 611, your Honor.

2 (Government's Exhibit 611 playing.)

3 Q And can you tell me the location we're looking at here?

4 A So now somebody is looking with a camera facing the
5 Senate floor, demonstrators and the witness, excuse me, the
6 defendant is in the center of the screen with the flex cuffs
7 on the Senate floor.

8 Q Thank you.

9 (Government's Exhibit 611 completed.)

10 Q Now if we could go to 611A. And is the defendant
11 depicted in 611A?

12 A Yes, I notice the defendant is standing on top of the
13 gentleman with the black book bag and black shirt and he has
14 the green helmet on.

15 Q And then 611B?

16 THE COURT: Before we do, we're going in reverse
17 order, this is not in evidence. If you want 611A in evidence
18 in order for him to identify, you should get it in evidence
19 before he identifies it.

20 MR. DISNEY: I understand, your Honor. Your Honor,
21 I'd move to admit 611A, 611B, and 611C.

22 THE COURT: A, B and C of 611. Mr. Burnham?

23 MR. BURNHAM: Court's indulgence. No objection.

24 THE COURT: Thank you, Mr. Burnham. 611A, 611B,
25 and 611C are admitted.

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1 Q If we could go to 611B.

2 THE COURT: We already had testimony about 611A and
3 I'll allow that before it was admitted. Now we're on 611C?

4 MR. DISNEY: This is B, your Honor.

5 THE COURT: B, I'm sorry.

6 Q Is the defendant shown in this photo as well?

7 A Yes, I notice the defendant is standing on top of the
8 individual with black book bag, black shirt and he's got a
9 green helmet on.

10 Q And finally, 611C?

11 A I could tell that the defendant is in the picture, he's
12 got the green helmet and he's got the flex cuffs in now his
13 right hand.

14 MR. DISNEY: And your Honor, next I would move to
15 admit 612 and 613.

16 THE COURT: 612 and 613, any objection?

17 MR. BURNHAM: No, your Honor.

18 THE COURT: Thank you. 612 and 613 are admitted.

19 Q And if we could go to 612. And can you tell us what
20 we're looking at here.

21 (Government's Exhibit 612 playing.)

22 A We're looking at video of demonstrators on the Senate
23 floor.

24 Q And if we could stop it at 14 seconds. First of all,
25 can you tell me what time this is now?

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1 A The time at the bottom of the video is 14:52 and 28
2 seconds.

3 Q And can you identify the defendant in this video?

4 A The defendant is on the left-hand side wearing the
5 green helmet and carrying flex cuffs in his left hand.

6 Q Thank you.

7 (Government's Exhibit 612 playing.)

8 Q Who had normally sat at these desks?

9 A Senators. This is a highly restricted area and the
10 audience for this room is Senators and officers of the Senate
11 and invited guests and staff.

12 MR. DISNEY: And your Honor, this is 613.

13 (Government's Exhibit 613 playing.)

14 Q If we could pause it. Can you identify the defendant
15 for the record?

16 A Yes, the defendant appears to be on the right-hand side
17 of the individual with the red hat, excuse me, in between the
18 two individuals with red hats wearing the green helmet.

19 Q Thank you.

20 MR. DISNEY: And Judge, your Honor, we would like
21 to just move to the -- he's shown once more at the end of
22 this, we'd like to move forward.

23 THE COURT: Okay.

24 (Government's Exhibit 613 playing.)

25 Q If we could stop it. At 14:55, do you see the

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1 individual that looks like he's exiting the door?

2 A Yes, I do.

3 Q Does that appear to be the defendant?

4 A That appears to be the defendant with the green helmet
5 on.

6 Q And where would that take -- where would you be if you
7 went through that door?

8 A If you go through that door you'll come out onto the
9 second floor and that is the main Senate, that is the main
10 door to the Senate Chamber.

11 Q Okay. The main, you're in a hallway?

12 A Yes, sir, you'll be in the hallway on the second floor
13 right outside an area we call the Ohio Clock Corridor.

14 Q Thank you. Then if we could go to 405.

15 (Government's Exhibit 405 playing.)

16 Q And Officer -- sorry, Captain Patton, can you tell me
17 what this area is?

18 A So this is another view of the third floor outside the
19 Senate Gallery, you'll notice in the right-hand side is a --
20 another screening portal and as well on the cabinet on the
21 right-hand side is a list of prohibited items for that
22 entrance into the gallery.

23 Q And what time is this?

24 A This appears to be 2:56:46 p.m.

25 Q And can you identify that person who's walking through

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1 the picture?

2 A The individual in the center of the screen appears to
3 be the defendant with the green helmet on.

4 Q Thank you.

5 (Government's Exhibit 405 completed.)

6 Q Next if we could go to 405.

7 THE COURT: We were just on 405.

8 MR. DISNEY: I'm sorry. I'm sorry, it's 408 then,
9 your Honor.

10 THE COURT: 408, okay.

11 (Government's Exhibit 408 playing.)

12 Q And while it plays, can you tell us the location?

13 A I'm sorry, the location right now? This is outside
14 the -- again, third floor area, this is the, outside the
15 Senate gallery, there's a staircase on the left-hand side
16 with an individual that appears to be the defendant because
17 he's wearing a green helmet going down the -- what we call
18 the West Grand Staircase that leads you --

19 Q At what time?

20 A At 2:56:54 p.m.

21 Q Thank you. Then next if we could go to 401.

22 Your Honor, this is still 408, I'm sorry.

23 THE COURT: This is still 408.

24 (Government's Exhibit 408 completed.)

25 Q Now, if we could play 407.

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1 Your Honor, I'll skip that -- I'm sorry, do
2 you have it? 407.

3 (Government's Exhibit 407 playing.)

4 Q Do you recognize this area, Officer -- or Captain?

5 A Yes. So this is a view of the second floor of the
6 Senate and appears to be two Metropolitan Police officers
7 running down a corridor to address an individual who just
8 came off the stairs, those stairs, again, go to the third
9 floor that we were just at.

10 MR. DISNEY: And then next, your Honor, I'd like to
11 move to admit Exhibit 800.

12 THE COURT: 800. This is being admitted through
13 this witness, and there's no objection to that?

14 MR. BURNHAM: No, your Honor.

15 THE COURT: All right. 800 will be admitted. And
16 once admitted, it can be shown.

17 (Government's Exhibit 800 playing.)

18 Q Can you pause it. So what area are we looking at now?

19 A So again, different view, it looks like the
20 individuals, defendant with the green hat -- helmet is coming
21 down the West Grand Staircase and is about to head back
22 towards the Senate, towards the President's room, going to go
23 down that hallway which is outside the Senate Chamber on the
24 second floor.

25 Q This is the second floor?

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1 A Yes, sir.

2 Q Okay. If we can continue playing this.

3 (Government's Exhibit 800 completed.)

4 Q And next, if we could show 409. And I just have a
5 couple more.

6 (Government's Exhibit 409 playing.)

7 Q And pause that. Can you tell me what we're looking at
8 here?

9 A So you're looking at the main hallway on the second
10 floor, that's the hallway that I referred to as the Ohio
11 Clock Corridor, that is that center area where it appears to
12 be the defendant just came out wearing a green helmet from
13 the Senate main doors to the Senate Chamber.

14 Q And the time?

15 A The time is 2:55:26 p.m.

16 THE COURT: And this is Exhibit 409?

17 MR. DISNEY: Yes, sir.

18 THE COURT: Described as west stairs.

19 THE WITNESS: There's no staircase in this photo.

20 This is --

21 MR. DISNEY: That is the name of the camera, that's
22 what we named it.

23 THE COURT: That's the designation on the camera?

24 MR. DISNEY: Yes.

25 THE COURT: All right.

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1 (Government's Exhibit 409 completed.)

2 Q And next if we could go to 410.

3 (Government's Exhibit 410 playing.)

4 Q And if we could pause that. What are we -- what's the
5 location here?

6 A So this appears to be, we're back at the first floor, I
7 believe, and then these individuals are coming out the
8 Parliamentary door that we looked at earlier, and so what I
9 see here is police officers at the top of the screen and it
10 looks like they're directing people out of the building
11 coming towards me.

12 Q And you said that the Parliamentary door was just
13 around the corner from the Senate Wing Door?

14 A Correct, sir.

15 Q And if we could go ahead and play 410.

16 (Government's Exhibit 410 playing.)

17 Q So these individuals are being moved outside, is that
18 correct?

19 A Correct.

20 Q And do you see the defendant in this photo?

21 A Yes, I see the defendant, he is touching a man with no
22 shirt and has a green helmet on in the center of the screen.

23 Q So you see the guy down at the bottom with the red
24 stocking cap?

25 A Yes, sir, the red stocking cap with the American stars,

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1 blue stars on the left-hand side of that.

2 Q So once you get past that individual, would you be
3 outside?

4 A Yes, you should be outside after that point.

5 Q Thank you.

6 (Government's Exhibit 410 playing.)

7 Q So if we can stop, stop the video here. Would you note
8 the time that the defendant then went outside?

9 A It is approximately 3:02 p.m.

10 Q Thank you. And lastly, 508.

11 (Government's Exhibit 508 playing.)

12 Q Where is this location?

13 A This is directly outside on the Upper West Terrace area
14 outside the Senate connecting corridor and outside the
15 Parliamentary door.

16 Q This is basically the outside of the area we just saw
17 everybody being pushed out to?

18 A Yes, sir.

19 Q Okay. Do you see the defendant in this video?

20 A I do, I see the defendant in the middle of the screen
21 and he's wearing a green helmet.

22 Q Thank you.

23 (Government's Exhibit 508 completed.)

24 MR. DISNEY: Your Honor, I have no other questions
25 at this time.

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1 THE COURT: All right. Mr. Burnham.

2 MR. BURNHAM: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. BURNHAM:

4 Q Good afternoon, Captain.

5 A Good afternoon, sir.

6 Q Charles Burnham, I have a few questions.

7 A Yes, sir.

8 Q So to start with, Captain, early on in your testimony,
9 when you were describing to counsel the various parts of the
10 landscape around the Capitol, you referred to free speech
11 areas, do you recall that?

12 A Yes, sir.

13 Q Why are they called that?

14 A There are grassy areas located around the Capitol
15 complex that are demonstration permitted areas, so
16 individuals coming to Capitol Hill who wish to demonstrate
17 have to apply for a permit in order to ensure that space is
18 available and that we try to manage so we don't have opposing
19 groups in the same geographical area.

20 THE COURT: These are areas that were within the
21 perimeter on that day, though?

22 THE WITNESS: That grassy area, there are grassy
23 areas, all the grassy areas on the Capitol complex have
24 permit numbers so for example I referred to Area 1 which is
25 the West Front grassy area, however, they are closed,

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1 demonstration areas were closed because of COVID, gathering
2 restrictions and as well as, depending on where they were
3 within our perimeter, they were closed.

4 Q So let's say if it was another day before COVID, there
5 was another type of demonstration, it's entirely possible
6 that the demonstrators could have been allowed to get closer
7 to the Capitol than they theoretically were allowed to get on
8 January 6th, is that right?

9 A That is correct, we have -- if it was not COVID, and we
10 had not been closed for approximately nine months, that
11 individuals could have access to the West Lawn of the
12 Capitol, for example, Area 1, and demonstrate. However, that
13 area had been closed I think since September, early October
14 for construction of the inaugural platform, I'm sorry.

15 THE COURT: I'm confused so I need to ask a
16 question. The perimeter that in one shot was shown as a red
17 perimeter.

18 THE WITNESS: Yes, sir, the red line.

19 THE COURT: Was that true because of COVID or was
20 that just the perimeter for January 6th or for the
21 inauguration?

22 THE WITNESS: That was the perimeter for
23 January 6th and that red line perimeter was extended because
24 of the demonstration activity, as well as the construction of
25 the inaugural platform as well.

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1 Q And there had been -- well, strike that. That sort of
2 gets to what I assume would be another -- would it be correct
3 to say that it's a goal of the Capitol Police to facilitate
4 First Amendment activity, citizens, you know, petitioning
5 their elected representatives insofar as it's consistent with
6 your security imperatives; would that be fair as a general
7 matter?

8 A Yes, part of our duties are to make sure that people
9 can exercise their First Amendment rights in a safe and open
10 environment.

11 Q Thank you. So speaking of that, in late of 2020, there
12 were I think at least two prior to January 6th demonstrations
13 in support of the former President, is that right, one in
14 November, one in December?

15 A That is correct.

16 Q And as a high ranking officer in the Capitol Police,
17 without getting into details, I assume you would have been
18 involved in preparing for those and making sure security was
19 as it should be during those demonstrations; would that be
20 right?

21 A Yes, I was working at the Capitol at that time for both
22 those demonstrations and part of our responsibility is to
23 make sure that we have officers working to make sure, you
24 know, the event happens without any physical harm or injury
25 to the buildings or to the people.

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1 Q And during those demonstrations, the two that I
2 referenced in November and December, I forget the exact days,
3 there were confrontations between people who were apparently
4 Trump supporters and other groups of opposite political
5 views, is that right?

6 A There were a couple skirmishes between demonstrators
7 and counter-demonstrators, again, I don't know the specifics
8 of which groups were out there.

9 Q As a general matter, there was pushing, shoving,
10 throwing hard objects, some injuries, would that be accurate?

11 A For the demonstrations that happened in November and
12 December, they were of significant amount of demonstrators,
13 and I'm sure there were some injuries.

14 Q You referred several times in your direct testimony to
15 the construction that was, scaffolding and whatnot that was
16 present on January 6th, you recall that, right?

17 A Yes, sir.

18 Q And I think you referred to there were bike racks that
19 were used to sort of demarcate that construction area from
20 the rest of the grounds, is that right?

21 A Yes, sir, there's a couple things, that red line that I
22 had shown earlier, that was an extended perimeter for the
23 January 6th events. The construction of the inaugural
24 platform had a perimeter around it as well, there was video
25 footage showing of another ornamental bike -- ornamental rack

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1 that went across the front of the Lower West Terrace and then
2 there was an additional snow fencing that was in place around
3 the grassy areas with appropriate signage indicating that the
4 area had been closed by the order of the Capitol Police
5 Board.

6 Q So the bike racks that were around the construction of
7 the inaugural platform, your testimony on direct was that
8 your officers, in an ad hoc manner I take it, commandeered
9 those bike racks to try and set up another fallback position
10 once the demonstrators began to approach closer than they
11 should have to the Capitol, is that right?

12 A Yes. So when demonstrators breached the security
13 perimeter that was established on the West Front, those
14 demonstrators started to move their way up Pennsylvania
15 Avenue Walkway, and as they were doing that, they were coming
16 into the construction area that had additional barricades. I
17 was personally there, I had come down and I had directed
18 additional bike rack because demonstrators had breached that
19 area, and everyone in that area, everyone in that area was
20 not authorized to be there. And typically if somebody goes
21 over that fence when that area's closed, it's an arrestable
22 offense, immediately. I directed the bike rack to be set up,
23 as you saw in the video, additional layer of bike rack was
24 coming up to start to give ground for our officers to push
25 people back from the stage.

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1 Q So my specific question is, just to make sure I focus
2 in on what I wanted to know is, it is true that your police
3 officers moved bike racks from the construction to set up a
4 counter-demonstrator position, correct?

5 A Yes, sir.

6 Q You mentioned the Capitol was off limits on that day,
7 you mentioned that, you mentioned invited guests were allowed
8 to come in if -- that would include journalists, wouldn't it?

9 A So no, it doesn't, sir. Only media that are allowed
10 inside the building are credentialed media and that has to be
11 credentialed through the House and Senate press galleries.
12 So journalists reporting for a local agency trying to get in
13 the building cannot get in the building.

14 Q But as point of fact there were journalists inside the
15 Capitol on January 6, a good number, correct?

16 A I'm sorry, you said, the question was?

17 Q The question was, there were, as a matter of fact,
18 journalists inside the Capitol on January 6th covering the
19 Electoral College, correct?

20 A Yes, sir.

21 Q And they were allowed to be there?

22 A Yes, if they were credentialed, they were allowed to be
23 there.

24 Q So as to the perimeter you described the red line on
25 one of the Government's exhibits, you mentioned that was

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1 largely composed of bike racks but then there were also
2 natural features of the landscape and certain kind of
3 fencing, that's an accurate summary, correct?

4 A Yes, sir.

5 Q Would it be correct to say the greater part of that
6 perimeter was bike racks?

7 A I would say so, that's a good -- the red perimeter,
8 yes, sir.

9 Q All right. And so isn't it a fact that at various
10 locations in the bike rack perimeter, the racks were moved by
11 law enforcement personnel, whether that was strategic
12 fallback or some other reason, the fact is there were several
13 occasions where law enforcement moved the bike racks from
14 where they were, is that right?

15 A No, sir, there's no reason for the police to move the
16 bike racks that made that outer red perimeter. What is
17 different than what I said earlier was there were extra bike
18 rack up at the construction area up at the Lower West Terrace
19 area, that was just stacked to the side and so that bike rack
20 had been moved, but the red perimeter, officers didn't have a
21 reason to take down that perimeter if that's what you're
22 asking.

23 Q I'm not asking whether they had a reason to, I'm asking
24 did they. It's true that some of those bike racks in the
25 outer perimeter got moved by law enforcement, right?

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1 A I'm sure the officers would move the bike rack to allow
2 themselves to go from one side to the other and then move the
3 bike rack back.

4 Q Isn't it true the inner bike racks within the outer
5 perimeter, some of those were moved by law enforcement as
6 well, isn't that right?

7 A Yes, sir.

8 Q Why doesn't Capitol CCTV have sound?

9 A It's just not designed that way, sir.

10 Q Okay. Let's focus on the Peace Circle. We saw a video
11 where there was a breach of the perimeter into the -- from
12 the Peace Circle into the green area and then beyond that;
13 you recall that video, correct?

14 A Yes, sir.

15 Q And it's my understanding that at that point, yourself
16 and your officers were improvising as best you could to
17 respond to that security situation, is that right?

18 A When you said improvise?

19 Q Yeah, improvising as best you could to respond to that
20 situation.

21 A Yes, when the area was breached, officers and officials
22 responded to that area.

23 Q And there were -- we saw video, a directive, officers
24 literally sprinting across that section of the Capitol to get
25 where they needed to be; you recall that, right?

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1 A Yes, sir.

2 Q All right. So I take it it wasn't a priority of law
3 enforcement to reassemble the outer perimeter to the extent
4 it was dislodged by protesters, is that right?

5 A That's an accurate statement.

6 Q All right. Just an issue of manpower, it wasn't the
7 biggest problem you had?

8 A Exactly.

9 Q Okay. Do you recall the time-lapsed video that the
10 Government showed you where it's sort of fast forward of the
11 crowd assembling and growing and growing and then ultimately
12 approaching the building; you recall that, right?

13 A Yes, sir.

14 Q Do you recall, I'm going to ask you some questions
15 starting I guess now and then there will be more where I ask
16 you about videos, and I won't replay all of them but if you
17 ever need your recollection refreshed in response to one of
18 my questions, I'm sure the Government will be good enough to
19 replay the video. So having said that, going back to the
20 time-lapsed video, if you recall, the crowd there literally
21 went out of the frame of the video, you couldn't see the end
22 of the crowd, is that right?

23 A Yeah, the crowd spilled to, if you're looking at the
24 video, to the left and to the right and as well as coming to
25 the center.

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1 Q And so if you had to estimate the distance from, again,
2 I guess we'll start, focus on the Peace Circle let's say and
3 you had to estimate the distance from the front line meaning
4 where you have a policeman and a demonstrator eyeball to
5 eyeball, from that line to the back of the crowd, I mean we
6 might be talking several hundred yards, would that be fair?

7 A Yeah, when you say -- so when you said the officer at
8 the eyeball to eyeball, that's the first officer at the
9 Pennsylvania Walkway and then a hundred yards back in the
10 Peace Circle, Pennsylvania Avenue roadway, is that what you
11 mean like hundreds of people?

12 Q I'm just asking how far did the crowd go back? Hundred
13 yards maybe, could be more?

14 A The crowd went all the way back to the White House,
15 sir.

16 Q Government's Exhibit 401, and again, I'm sure the
17 Government will play this if you need to, if you recall that
18 part of 401, was the different breaches that took place there
19 at the East Wing doors, breaking of the window and then --
20 you recall that?

21 A Yes, breaking of the windows first and then kicking the
22 door out.

23 Q Yes, sir. So if you recall the initial breach which I
24 think we all agreed took place around 2:12 consisted of, just
25 to summarize, got two windows on either side of the door and

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1 protesters that were there kind of cooperated to break out
2 those two windows; is that a summary of how they got in?

3 A Sure, yes, sir.

4 Q And do you recall that once the protesters started
5 going in through those windows there was -- on the inside of
6 the windows there was almost like historical markers right
7 there inside the window; do you recall that?

8 A When you say historical markers, you mean the display
9 cases?

10 Q That's what they looked like to me, little pieces of
11 furniture that I thought were historical markers, perhaps
12 they're something else; you recall what I'm talking about,
13 though?

14 A Yeah, I think you're talking about those wooden display
15 cases that are right below the windows that got stepped on.

16 Q Sort of knock -- get knocked over there, you recall
17 that?

18 A Yes.

19 Q So at a certain point your officers cleared those out
20 of the way, you recall that? The next video and those
21 historical markers are gone, do you recall that?

22 A Yes, they fell over, got moved out of the way.

23 Q Do you recall where they -- were they put in a closet
24 or off down the hall, do you recall?

25 A No, I don't know where they wound up.

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1 Q So at a certain point over the course of the events
2 there at that door, the glass from the windows on either side
3 of the door, it appeared to have been completely smashed out
4 at a certain point; by that I mean there weren't shards left
5 after awhile, would you agree with that?

6 A Yes, sir.

7 Q So as you're approaching the -- step back for a minute.
8 The Government showed a video that had sort of the approach
9 from ground level up the stairs to those doors, you recall
10 that?

11 A Yeah, on the Upper West Terrace.

12 Q And wouldn't you agree that from, we'll call the ground
13 level before ascending the stairs, if I was, you know, trying
14 to retrace the steps, you can't see those doors from when you
15 first start up the stairs, would that be right?

16 A Correct, there was -- yes, you cannot see that top
17 landing from the bottom of the stairs.

18 Q You mentioned a fire alarm. Do you recall hearing that
19 fire alarm during the time period you were present there by
20 the door?

21 A So the door, all of our doors have a fire package on
22 them so doors that are typically closed like the Senate
23 connecting corridor wing door, that door has a push bar on it
24 so in the event of a fire, emergency, and someone had to
25 leave the building, they could depress that push bar, wait 45

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1 seconds and the Mag lock will automatically release that
2 door. If you come by and touch that door, push the push bar
3 in, it will beep at you. If that bar is depressed for a
4 significant amount of time, then that -- that door will go
5 into alarm mode and then you'll hear that audible alarm and
6 those are specific to those different doors.

7 Q But the alarm was not actually sounding at the time you
8 approached the door, isn't that right?

9 A No, the door -- when the door gets kicked out, the
10 alarm just goes off indefinitely, it's not -- that's not the
11 fire alarm for the building, that's just an individual, what
12 we call a local alarm for that door.

13 Q So is it your testimony that alarm was sounding at the
14 time you were present by that door?

15 A Oh, I heard the alarm, the alarm was going off on all
16 the doors there were breached. You heard the same thing at
17 the Rotunda door when the Rotunda door was breached, you
18 could hear the audible alarm in the video. So it's a common
19 noise to go off.

20 Q You recall the -- do you recall the video where
21 Mr. Brock can be seen entering the building, correct?

22 A Yes, sir.

23 Q Isn't it correct there's no police there at the time?

24 A Yes, sir.

25 Q Do you recall that there's a video where the

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1 demonstrators, where they're going up the stairs and there's
2 a chant that can be heard, saying Nancy, Nancy, Nancy, do you
3 recall that video?

4 A Yes, sir.

5 Q Do you recall identifying Mr. Brock in that video and
6 his lips don't appear to be moving during that video, if you
7 recall?

8 A I don't recall if his lips were moving.

9 Q Do you recall him like appearing to look down at his
10 phone during that section of it?

11 A That seems very reasonable.

12 Q Not only does it seem reasonable but do you recall what
13 I'm talking about where you can see him looking at his phone?

14 A I'd have to look at the video, but again, that seems
15 like a very realistic thing that he could have been doing at
16 that time.

17 Q Government's 505 was a video that had, depicted
18 Mr. Brock and then there was a sign above it that said
19 Speaker Pelosi's office or something like that; you recall
20 that, right?

21 A Yes, sir.

22 Q I think you made this clear in your direct testimony
23 but I just want to make it absolutely certain for the record,
24 that's not part of her office, that was the outer area
25 outside the office, correct?

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1 A That is correct.

2 Q All right. And so based on all the video we've seen
3 today, Mr. Brock did not enter that office, correct?

4 A I think there was a video of him coming out of that
5 corridor, and again, when you go down that corridor, you are
6 exposed to the Speaker's office suites. Again, there's
7 adjoining offices off that hallway and I think one of the
8 exhibits had Mr. Brock coming out, meaning you saw him
9 walking from the corridor with the sign that says Speaker
10 Pelosi over it.

11 Q I want to be very clear here, there is not a video that
12 shows Larry Brock in Nancy Pelosi's office, that's not a
13 thing --

14 A You are correct.

15 Q Thank you.

16 A There is not a video of him in her office, correct.

17 Q And isn't it correct that --

18 A That I've seen today.

19 Q -- other individuals gained access to that office
20 throughout the course of the day, at least one, right?

21 A I remember seeing some videos of some folks sitting in
22 a chair with their legs up on a desk in the Speaker's suite.
23 There were several of those offices in the Speaker's suite
24 that were locked and there were individuals from her staff
25 barricaded in those offices and there's many offices in that

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1 hallway where the Speaker is.

2 Q Government's 412 was the video of the Rotunda where
3 Mr. Brock was kind of the bottom left-hand corner, do you
4 recall that video?

5 A Yes, sir.

6 Q You'd agree that in that video he seems to be taking
7 pictures of the paintings, the statues, all the other,
8 whatever else is in that part of the Rotunda, that be an
9 accurate description?

10 A Yes, sir.

11 Q All right. And that is a spectacular part of the
12 Capitol if you haven't seen it in a while, you would agree
13 with that?

14 A The Rotunda is very spectacular and it's underneath the
15 Dome which is the single largest symbol of Democracy in the
16 free world.

17 MR. BURNHAM: Can I just have a moment to --

18 THE COURT: Say that again?

19 MR. BURNHAM: Could I have a moment to consult with
20 counsel for the Government?

21 THE COURT: Absolutely.

22 MR. BURNHAM: Thank you.

23 (A discussion was held off the record between
24 counsel.)

25 Q I'm going to ask the Government to bring back up, as

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1 you see there, this is Government's Exhibit 412 in evidence
2 if they'd be good enough to play that video, I'll have a
3 question when we get to a certain part of it.

4 (Government's Exhibit 412 playing.)

5 Q Sir, as it's playing now, Captain, in the sort of the
6 top right there, can you see what looks like a bag of flex
7 cuffs that looks like maybe it spilled and there's some flex
8 cuffs on the floor there; do you see what I'm talking about?

9 A Yeah, the black bag right there, that individual just
10 walked up to?

11 A Yes.

12 Q Yeah, I can see that black back, I see it spilled.
13 But ...

14 Q And in a minute, Mr. Brock, if you can look at him on
15 the left, he's going to walk over there.

16 Can I consult with counsel for a moment?

17 THE COURT: You may.

18 (A discussion was held off the record between
19 counsel.)

20 THE COURT: Maybe I can cut through this, if I can
21 guess what you're trying to show. There are videos up until
22 this video that show Mr. Brock and he's been identified in
23 where he did not have flex cuffs in his hand. This video,
24 Captain Patton, has already identified some flex cuffs
25 sitting on the floor at the time of this video, and then

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1 there are later videos that show Mr. Brock with the flex
2 cuffs.

3 MR. BURNHAM: I'll just proffer, this video --

4 THE COURT: If the Government will stipulate that
5 that's accurate, you can make your argument from that.

6 MR. BURNHAM: Well, can I just ask through the
7 Court, this video that we're looking at, if, there's a little
8 bit more to it and it shows Mr. Brock picking up those very
9 flex cuffs I just identified.

10 THE COURT: I know, that you're having trouble
11 finding.

12 MR. BURNHAM: Perhaps the Government would just
13 stipulate that that's what it would show.

14 THE COURT: If they could stipulate to that.

15 MR. DISNEY: We will stipulate.

16 THE COURT: It's a stipulation that in the later
17 part of that video, which was 412 I think, that Mr. Brock
18 actually picks up the flex cuffs from the floor.

19 MR. BURNHAM: Thank you. Can we take a look at
20 Government's 419, please.

21 (Government's Exhibit 419 playing.)

22 Q Can we stop it there, please, if you would. Let's --
23 so here, you see in this video, you've seen this before, you
24 see Mr. Brock there and then you see a gentleman near him,
25 looks like he's wearing like a black hat of some kind or a

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1 black helmet, do you see who I'm talking about?

2 A Yes, sir, in front of the guy with the cane, green
3 shirt?

4 Q That's correct. Can we go ahead and play it, please.

5 (Government's Exhibit 419 playing.)

6 Q We're going to have to come back to that one. You
7 recall seeing a video where -- well, strike that. Can we see
8 Government's 409, please. I don't think that's 409.

9 (A discussion was held off the record with
10 counsel.)

11 Q Yeah, that's it. So take a look at this video as it
12 plays.

13 (Government's Exhibit 409 playing.)

14 THE COURT: Is this 409?

15 MR. BURNHAM: 409. Can you pause it there for a
16 second, please.

17 So here in this video, what we just saw was
18 Mr. Brock, he comes out of the door and passes at least a
19 half a dozen policemen and then continues walking, is that a
20 fair summary?

21 A Yes, sir.

22 Q And he's got the flex cuffs there in his hand, you see
23 that, right?

24 A Yes, sir.

25 Q And you didn't see him make any kind of gesture to

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1 shove them in his jacket or hide them from police or anything
2 like that, correct?

3 A Correct, sir.

4 Q All right. Can we play it, please.

5 (Government's Exhibit 409 playing.)

6 Q Now at this part there's a policeman, looks like maybe
7 an MPD officer that appears to be redirecting him from the
8 direction he was going to go back the other direction, does
9 that appear to be what it is?

10 A Yes, sir.

11 Q And he's complying there with whatever that officer's
12 saying seemingly, correct?

13 A Yes, sir.

14 Q And finally, I think this is the last video I need to
15 play is 410, please.

16 (Government's Exhibit 410 playing.)

17 Q You recall this video, right?

18 A Yes, sir.

19 Q And this, if you watch the man there in the shirt, he
20 appears to be, you can't tell but he appears to be kind of
21 maybe giving some lip to those officers there?

22 A You said shirt, you mean the guy with no shirt?

23 Q No shirt. He looks like he might be giving a hard time
24 to the officers there if you had to interpret his body
25 language, would that be fair?

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1 A That's fair.

2 Q And one might even think you would wonder if he's
3 intoxicated just from the look of him, would that be
4 unreasonable?

5 A I think he's been sprayed with pepper spray, his face
6 is all red, but yeah, you could say something like that.

7 Q And now does the defendant appear to be trying to calm
8 him down and encourage him to leave the premises?

9 A Yes, that's what it appears to be.

10 MR. BURNHAM: Can I have a moment, court's
11 indulgence.

12 THE COURT: Certainly.

13 (Pause in proceedings.)

14 MR. BURNHAM: Thank you, Captain, no further
15 questions.

16 MR. DISNEY: No redirect, your Honor.

17 THE COURT: Captain Patton.

18 THE WITNESS: Yes, sir.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you, your Honor.

21 MR. DISNEY: May the captain be excused?

22 THE COURT: Yes, he may be.

23 (The witness was excused.)

24 THE COURT: Maybe it makes the most sense for us to
25 take our afternoon break now before you begin your next

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1 witness. The next witness will be who?

2 MS. AYERS-PEREZ: Sergeant Timberlake, your Honor.

3 THE COURT: Let's start again -- oh, let's make it
4 exactly, let's do it at ten after by that clock, ten after 3.

5 (Court in recess, 3:00 p.m. to 3:12 p.m.)

6 THE COURT: Before we put the next witness on the
7 stand, no one's raised this but let me make sure where we are
8 on it. With respect to the excluding witnesses, under Rule
9 615, it requires a party's request for the Court to order
10 that witnesses not hear other witnesses' testimony but that's
11 how we're proceeding, we don't have witnesses. Before you
12 bring that witness in, could you just keep the witness out
13 for a second. We're proceeding by not having witnesses in
14 the courtroom, so is someone invoking Rule 615?

15 MR. BURNHAM: I invoke the rule, your Honor, thank
16 you.

17 THE COURT: All right.

18 MS. AYERS-PEREZ: And the only thing I would point
19 out, though, is one of our agents is in here sitting at
20 counsel table who is --

21 THE COURT: One of your agents, meaning an agent
22 who's going to be a witness?

23 MS. AYERS-PEREZ: Yes, your Honor.

24 THE COURT: You can designate one person to be a
25 representative, I don't allow more than one person. The rule

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1 doesn't really clarify whether it can be more than one and
2 some judges allow more than one for an organization to bounce
3 in and out, I don't allow that and indeed the rule won't
4 always say that, I can guarantee you.

5 But the next question is the rule is not clear on
6 what excluding witnesses means, whether it just means that
7 witnesses are not in the courtroom or whether it also means
8 that witnesses cannot read transcripts or talk to other
9 witnesses, so if you want the latter, you have to request
10 that.

11 MR. BURNHAM: To be honest, your Honor, I've always
12 understood it to mean that the witnesses are not to be
13 informed of the substance of testimony.

14 THE COURT: It varies from judge to judge. And to
15 be safe, I always say request it if you want it.

16 MR. BURNHAM: I request that, the most fulsome
17 imposition of a rule on witnesses.

18 THE COURT: So the rule that will be invoked here
19 is that witnesses will be excluded; in other words a witness
20 can't be in the courtroom, a future witness, but also that
21 the witnesses cannot discuss the case among themselves and
22 learn of another witness' testimony or read transcripts of
23 the proceedings. Okay?

24 MS. AYERS-PEREZ: Yes, and your Honor, just for the
25 record, I had informed all the witnesses prior to today that

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1 they are not to be discussing the testimony or anything about
2 that, even if they're in the same witness room, they're not
3 to discuss the case.

4 THE COURT: I had not anticipated that there was a
5 problem with it, but I'm just raising it because it was not
6 invoked by anyone but I assumed that someone probably wanted
7 that to be the case.

8 MS. AYERS-PEREZ: Right, your Honor, and although
9 we do have two agents, only one is going to testify, and he
10 is the one we're designating, he is here at counsel table.

11 THE COURT: All right. Let's have Officer
12 Timberlake.

13 THE CLERK: Good afternoon, sir, please raise your
14 right hand.

15
16 N A I R O B I T I M B E R L A K E ,
17 called as a witness and being duly sworn, testifies
18 as follows:

19 THE COURT: Good afternoon, Officer Timberlake.
20 Ms. Ayers-Perez, please.

21 MS. AYERS-PEREZ: Thank you, your Honor.

22 DIRECT EXAMINATION BY MS. AYERS-PEREZ:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Can you please state and spell your name for the

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1 record?

2 A Sergeant Nairobi Timberlake, N-a-i-r-o-b-i, last name
3 Timberlake, T-i-m-b-e-r-l-a-k-e.

4 Q Thank you. Sergeant Timberlake, where do you work?

5 A U.S. Capitol Police.

6 Q And how long have you worked with the Capitol Police?

7 A Twenty-six years.

8 Q You said your rank is as a sergeant?

9 A Yes.

10 Q When did you first get hired by Capitol Police?

11 A February 5th, 1997.

12 Q And when did you get promoted to sergeant?

13 A November 2003.

14 Q When you were first hired by Capitol Police, what was
15 your rank at that point?

16 A Private with training.

17 THE COURT: All right, let's, Mr. Bradley, let's
18 make sure the microphone is in front of the witness so the
19 court reporter can hear clearly. Thank you all.

20 Q What were your day-to-day responsibilities when you
21 first began with Capitol Police?

22 A After training I was assigned to the Capitol division
23 midnight shift, 11 to 7, 11 p.m. to 7 a.m., duties were
24 responsible for inside patrols and outside patrols.

25 Q Okay. And when you were promoted to sergeant, what

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1 were your day-to-day job responsibilities at that point?

2 A Once promoted, I was sent over to the Senate division
3 for approximately a year and a half, I worked midnight shift
4 and did 3-to-11 shift.

5 Q What is the Senate division?

6 A Senate division is responsible for all Senate office
7 buildings, Dirksen, Hart, and Russell.

8 MS. AYERS-PEREZ: Your Honor, at this point I would
9 move to admit Government's 102, I do not show that it's in
10 evidence yet.

11 THE COURT: 102 is not in yet, any objection?

12 MR. BURNHAM: Court's indulgence.

13 THE COURT: Certainly.

14 MR. BURNHAM: No objection.

15 THE COURT: Without objection, 102 is admitted.

16 Q And Sergeant Timberlake, can you see that on your
17 screen there?

18 A Yes.

19 Q Okay. So after you worked at the Senate division,
20 where did you move on from there?

21 A I was reassigned back to the Capitol division, day
22 work, power shift.

23 Q What's the Capitol division?

24 A Capitol division is responsible for the Capitol
25 building itself, the Capitol grounds, what we call the

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1 square.

2 Q Where were you, what division were you working on
3 January 6, 2021?

4 A Senate Chambers.

5 Q Okay. And what is the Senate Chambers division?

6 A Senate Chambers section is within the Capitol division
7 which is in uniform services, we're responsible for the
8 Senate Chamber second floor, third floor, second floor is
9 mainly the Senate Chamber and the Senate wing, third floor is
10 the galleries.

11 Q How long had you been in the Senate Chamber division?

12 A Senate Chambers, approximately eight years.

13 Q Okay. Are you still in that division now?

14 A Yes.

15 Q And were you working on January 6, 2021?

16 A Yes.

17 Q And throughout the rest of this time we're here today,
18 if I just say January 6th, will you understand that to mean
19 January 6th, 2021?

20 A Yes.

21 Q Okay. Were you scheduled to work that day?

22 A Yes, I was.

23 Q What time were you supposed to arrive?

24 A 8:30.

25 Q And did you arrive by that time?

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1 A Yes.

2 Q Take me through briefly what your morning was like that
3 day.

4 A So briefly, 8:30 is our roll call start time for the
5 officers and supervisors, there's a roll call supervisor that
6 comes in at 0700 hours, he preps for the day as far as
7 assignments, make sure the duty roster is correct from
8 checking the sick book, making sure that all officers are
9 accounted for so when we have roll call at 8:30 we do a roll,
10 generally goes by post assignments and officers are given
11 their assignment for the day.

12 Q Great. And so were you expecting anything out of the
13 ordinary that day?

14 A No, ma'am.

15 Q All right. Where did you expect to spend most of your
16 day that day?

17 A Approximately on the second floor, Senate floor
18 escorting members, Senators back and forth from the House
19 Chamber to the Senate Chamber.

20 Q Was there anything going on that day that you thought
21 would necessitate escorting members back and forth?

22 A Yes, ma'am, we were certifying the election.

23 Q Had you been a part of that before while working in the
24 Senate Chamber?

25 A Yes.

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1 Q Okay. Were you aware of any protests or rallies that
2 were going to be happening that day?

3 A Yes.

4 Q Okay. Did you think that would affect you?

5 A No, ma'am.

6 Q And why not?

7 A From my understanding from our briefings that the
8 protesters were mainly going to be at the White House and
9 that at some point some of the protesters might come over to
10 Capitol grounds but that they would be outside the perimeter.

11 Q Okay. Did you have any security concerns that day with
12 the going back and forth between the different chambers?

13 A No, ma'am.

14 Q Can you show us on the map here, and you're able to
15 touch on your screen and I'll clear it when you're done, but
16 can you show us what you mean by going back and forth between
17 the chambers and what you were anticipating that day?

18 A So from this, so from the Senate Chamber at the Ohio
19 Clock area, the main entrance right here, Senators would
20 gather from inside the chamber, would walk across the second
21 floor of the U.S. Capitol led by the President of the Senate
22 Mr. Pence, and they would come through here, we would have
23 uniform officers on either side of the entry points and then
24 they would enter through the House main door.

25 Q And were you anticipating that to happen frequently?

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1 A We weren't aware how it was going to go down but it was
2 our understanding that there was a lot of objections per
3 state for the ratification so we were going back and forth
4 periodically that morning, and afternoon.

5 Q Did that day end up going normally?

6 A Yes, for the morn -- yes.

7 Q That morning. Is there any point on January 6th where
8 things started to get abnormal?

9 A In the early part of the afternoon, approximately
10 2 p.m.

11 Q Okay. Tell us what happened at 2 p.m.

12 A Just prior to that, we saw some demonstrators in the
13 Upper West Terrace of the Capitol in this area here
14 (indicating), if you're looking from the second floor by the
15 Senate door balcony, you can see there were individuals up in
16 the secured area of the Upper West Terrace.

17 Q And did you personally see that?

18 A Yes.

19 Q Where were you located when you saw that?

20 A Second floor main hallway off of the Ohio Clock, right
21 here (indicating).

22 Q Okay. And what did you do when you saw that?

23 A At that point we were just doing normal operations. I
24 then went around to the Republican door which is over here by
25 the bank of six so the six elevator banks there, that's

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1 called the Republican door right off the Senate floor, at
2 that point we heard a bang, couple of loud noises on the
3 first floor. I was then advised by one of the officers we
4 think we have a breach on the first floor. That's when I --
5 I'm sorry.

6 Q I'm sorry, I'm sorry, I did not mean to cut you off.
7 Going back to when you first observed people outside, were
8 you concerned for security at that point?

9 A Yes, ma'am. The Upper West Terrace was supposed to be
10 secured for the inauguration so that's a restricted area,
11 that's police officers and AOC staff only.

12 Q When you say AOC staff, what does that stand for?

13 A I'm sorry, Architect of the Capitol.

14 Q Were you concerned inside the Senate at that point?

15 A It raised our security level up as far as people being
16 that close to the skin of the building, but at that point we
17 didn't, we didn't have any breach or anybody that wasn't
18 supposed to be inside the building at that time, so we were I
19 guess concerned but it didn't reach the high level yet.

20 Q So tell me about what happened next.

21 A So I'm at the Republican door, we hear, like I said, a
22 big bang, we believe there's a breach, and that's when I gave
23 the order to secure the chamber.

24 Q Can you give us approximately, if you remember, what
25 time that was?

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1 A I couldn't, ma'am, I just knew it was after 2:00, I'm
2 not sure of the specific time.

3 Q So when you give an order to secure the chamber, what
4 does that mean?

5 A So the order is to shelter in place so that means the
6 uniform officers, they're at each one of the entry points
7 around the second floor and third floor of the chamber and
8 the plain clothes officers are to come inside the chamber,
9 secure the doors, and then start accountability check.

10 Q So we've talked about going back and forth between the
11 chambers; was anybody in the Senate Chamber at that point?

12 A At that time, we had the President of the Senate and
13 approximately, I don't have the final count but it was
14 probably about 88 Senators in that chamber at the time.

15 Q When you say the -- when you say the President of the
16 Senate, are you talking about Vice President Michael Pence?

17 A Correct.

18 Q So tell me about what the accountability checks looked
19 like.

20 A So once the chamber is secured, the cloak room,
21 Republican cloak room, the Democrat cloak room and the door
22 keepers which are controlled by the Senate Sergeant of Arms
23 are supposed to do accountability list. So the Republican
24 cloak room supposed to give me a list of all the Republican
25 Senators that they have present, so same with the Democratic

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1 cloak room, they're supposed to give me all the list of
2 Senators that are present and then the Sergeant of Arms staff
3 supposed to give me a list of staff, their staff
4 accountability, and if there's anybody inside the gallery,
5 supposed to give me a list of how many people were in the
6 galleries.

7 Q Okay. And did that happen?

8 A Yes.

9 Q How long did that take to happen?

10 A Approximately five minutes.

11 Q And how were people inside the chamber, did they
12 understand what was happening at that point?

13 MR. BURNHAM: Objection, foundation. Sorry, object
14 to foundation. His testimony about what other people
15 understood.

16 THE COURT: Maybe you could ask a question or two
17 before you ask that question.

18 Q So there were a number of people still in the Senate
19 Chamber at that point, right?

20 A Yes, ma'am.

21 Q How many Senators did you estimate earlier?

22 A I believe the count was 88.

23 Q And were there staffers as well?

24 A Yes.

25 Q Okay. Could you see their expressions?

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1 A Yes.

2 Q Did they -- what did they seem like at that point?

3 A They didn't fully understand what was going on, when
4 you give an order like that, we secure the chamber, one of my
5 officers approaches the main chair and then has a
6 predetermined announcement to give so depending on the
7 situation, depends on the card that they read.

8 Q Do you remember what the announcement was that day?

9 A That Capitol Police had a situation, we have secured
10 the chamber, please stand by, Senators, please take your
11 seats, we will update you as soon as we get clarification.

12 Q And prior to that announcement, what was happening
13 inside the Senate Chamber?

14 A The Senators had just come back from the House side so
15 we had VP Pence there and also had majority of the leadership
16 inside the chamber at the time.

17 Q Okay. Were they actually doing legislative activities
18 at that point?

19 A Yes, we were in session.

20 Q Okay. What happens after that announcement?

21 A After that announcement we cut the feed, the TV feed to
22 the chamber, and then with the Sergeant of Arms we had to
23 make a determination of what we were going to do next.

24 Q What about the legislative activities that had been
25 happening, are they still happening at that point?

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1 A No, ma'am, everything was shut off at that time.

2 Q Is that part of the Electoral College count?

3 A Yes.

4 Q So what happened then?

5 A Once we secured the chamber, we were accountability,
6 find out how many people we have with us in the chamber and
7 then we were just standing by to make a determination as far
8 as where we were going to go next or what we were going to do
9 next.

10 Q Are you aware of what's happening outside the Senate
11 Chamber at that point?

12 A At that point, no, ma'am, I had sent an officer on the
13 East Side Wing to give me a heads up to do some recon on the
14 second and first floor.

15 Q When you say recon, what do you mean by that?

16 A Determine exactly what kind of breach do we have, how
17 many people do we have inside the building, intruders.

18 Q And at what point did you learn that there had been a
19 breach?

20 A We kind of figured it was -- it was something major
21 going on after we had locked and secured the chamber, then
22 when the officer got back to me to let me know how bad it
23 was, we figured we had a short amount of time before we had
24 to leave.

25 Q What was your understanding on how bad it was at that

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1 point?

2 A From what I understood he told me there was multiple
3 individuals on the first floor, protesters.

4 MR. BURNHAM: I object to hearsay at least insofar
5 as it's coming in for the truth.

6 THE COURT: Can you do this without hearsay,
7 please?

8 Q Okay. So Sergeant Timberlake, at that point, did you
9 become aware that -- or were you aware at that point that
10 there might have been a breach or there had been a breach?

11 A Yes.

12 Q What do you do at that point?

13 A We doubled up on the exter -- sorry, we doubled up on
14 the wing doors, the other doors were secure, and then we
15 waited for the Senate Sergeant of Arms to get in
16 communication with the command center to make determination
17 what we were going to do next.

18 Q And how long did that take?

19 A That took about approximately another five to ten
20 minutes.

21 Q What did you do next?

22 A At that point, when the decision was made to move the
23 Senators to another location, the first thing we did was
24 leadership left first, we then got Mr., sorry, got Vice
25 President Pence together with his group, I believe his

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1 brother was in the gallery on the third floor at that time,
2 we brought his brother and his sister -- sorry, brother and
3 wife down to the second floor, put them in a package and took
4 them over to another location.

5 Q Okay. And what about everybody else who was in the
6 Senate Chamber?

7 A We kept them in the chamber momentarily. Once I got
8 back from dropping off the VP, we got the senators ready and
9 escorted them out of the chamber to another location, secured
10 the second floor doors, then I proceeded up to, up the East
11 Grand Staircase to the third floor where I had an officer
12 already assigned, he was waiting for the keys from me to
13 open -- I'm sorry, to secure the third floor gallery doors.

14 Q Okay. And before you go up to the third floor, do you
15 have any sort of radio on you that day?

16 A Yes, ma'am.

17 Q Okay. And does the radio, does it connect to other
18 officers who are there?

19 A My radio, it was different channels on the radio. My
20 radio is assigned to the Senate Chamber or chamber channel
21 which is a designated channel for both Senate and House
22 Chamber officers, but my radio at that time was on scan, so I
23 was able to not only monitor my channel, I was also able to
24 monitor the inside channel and the outside channel.

25 Q Did you in fact monitor the inside and outside channel

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1 that day?

2 A Yes, ma'am.

3 Q What did it sound like, without going into what anybody
4 said?

5 A It was hectic, it was a lot of radio communication
6 going on, a lot of officers requiring or requesting
7 additional assistance.

8 Q And you've been with Capitol Police quite a long time,
9 had you ever heard the radio like that?

10 A No, not like that.

11 Q I'm going to clear this out.

12 THE COURT: I thought that was very meaningful.

13 Q So you go up to the third floor and you mentioned the
14 gallery; what is it you're trying to do up there?

15 A The officer doesn't have keys to secure the gallery
16 doors, so I am -- I'm the only one that has the master keys
17 at that time, so I get up to -- after I secured the second
18 floor, the Senators are on their way to the next location
19 with another supervisor and approximately five other
20 officers, so me and another officer responded to the third
21 floor. There's an officer already assigned up there waiting
22 for the keys, I hand them the keys so he can start securing
23 the gallery doors.

24 Q How many Senate Gallery doors are there?

25 A There's approximately nine.

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1 Q And had any of the doors been secured or were all nine
2 unsecured?

3 A Approximately only four more doors had to be secured.

4 Q Okay. And when you say secured do you just mean
5 they're open?

6 A They're unsecured -- so they need to be locked and
7 secured, it's two doors, there's an end door, inner door
8 which is wooden doors and then there's an outer door, so each
9 gallery has a set of two doors.

10 Q Why do you need to lock those doors?

11 A To secure the chamber so that make sure there's no
12 vandalism nobody's bringing in or doing anything.

13 Q Okay. And can you get into the Senate Chamber from
14 those doors up there?

15 A Yes.

16 Q So tell me what happens when you go upstairs?

17 A I see a couple of protesters as I get up to the third
18 floor landing as I go around from the east side to the main
19 center hallway, I give officer the keys, the master keys, he
20 then proceeds to try to secure the remaining doors.

21 Q And was he able to?

22 A No.

23 Q Why not?

24 A At that point he was confronted with several
25 protesters.

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1 Q Could you see this?

2 A Yes.

3 Q So tell me what you saw.

4 A At that point we were I believe at gallery number
5 three, we get into a shoving match with a couple of the
6 protesters shoving back and forth, he's trying to lock the
7 door, I get hit in the back of my head by at least one or two
8 of the protesters and then it's -- at that point it's three
9 against maybe 20 people.

10 Q Okay. So what do you do at that point?

11 A Um, I just made a determination to cut our losses
12 there. We could have pushed the fact but I guess it was
13 just, to me after calculating, it was just better to get back
14 with the rest of the group, secure the Senators, and then
15 come back with more manpower.

16 Q Okay. Can you show us on the map where exactly you
17 were during this?

18 A Okay. So I ran into the large group here. So
19 protesters were coming down this main hallway here
20 (indicating).

21 Q Sergeant Timberlake, I apologize, can you move your
22 microphone a little bit closer to you?

23 A Sure. So I'm by the Senate Chamber by Gallery 3 and 4,
24 officers trying to secure the chamber and then more
25 individuals are coming down the east hallway on the third

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1 floor from the center of the building.

2 Q Okay. And is that what you just showed us on the map
3 here?

4 A Yes.

5 Q All right. I'm going to clear that out, if we can pull
6 up Government's 419. And I show that this is in evidence,
7 your Honor?

8 THE COURT: It is in evidence. As long as it's
9 419.

10 Q Can you expand that. Okay. And don't play yet.
11 Sergeant Timberlake, do you recognize this area we're looking
12 at?

13 A Yes, ma'am.

14 Q Is that the area you were just speaking about?

15 A Yes.

16 Q What are these doors that we're seeing here?

17 A So the doors on your right would be the gallery doors
18 where the general public will come and visit the Senate
19 Chamber.

20 Q So I'm going to draw a couple circles here. And I've
21 drawn four circles and my circles show up in red. Are those
22 the doors we're talking about?

23 A Yes, ma'am.

24 Q So when you say they're unsecured is that what we're
25 looking at here?

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1 A The first door here was secured (indicating), the other
2 two doors down the hallway are the ones that needed to be
3 locked and secured.

4 Q Okay. I'm going to clear this out. All right. If we
5 could play Government's 419.

6 (Government's Exhibit 419 playing.)

7 Q We can pause right there. I'm pausing at the 11-second
8 mark. I'm going to make a circle around one person. This is
9 an individual wearing a helmet, vest, jacket, do you remember
10 him?

11 A Yes, ma'am.

12 Q How do you remember him?

13 A He was one of the most vocal -- well, he and the
14 gentleman in black were very vocal, the gentleman with the
15 green helmet was telling the other gentleman to calm down,
16 that's not what we're here for, and ... sorry. That was
17 pretty much it.

18 Q Okay. Can you draw on the screen where the gentleman
19 in the black is that you're referring to.

20 A (Witness complies.)

21 Q So when the guy in the helmet, when he's saying this,
22 are people listening to him?

23 A Yes.

24 Q And what do you observe that makes you believe people
25 are listening to him?

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1 A He had a command presence about him, he was, like I
2 said, tell everybody, when he told everybody to calm down,
3 that's not what we're here for, that's not what we're about,
4 the gentleman in the black kind of took it down a notch, and
5 I believe the gentleman in the red hat was also one, right
6 here is the one who attacked me (indicating).

7 Q So what happens after he does that?

8 A That's when we fell back and tried to catch up with the
9 rest of our group.

10 Q Okay. And did this gentleman, did he help you shut the
11 gallery doors at any point?

12 A I'm sorry?

13 Q Did he help you shut the gallery doors?

14 A No.

15 Q Did you see any flex cuffs on him?

16 A Not at that time, no.

17 Q And when I say flex cuffs, do you know what I'm talking
18 about?

19 A Yes, we have what we call arrest kit up there on the
20 third floor, and we use plastic cuffs to secure prisoners.

21 Q Okay. Were you pretty close to the guy in the helmet?

22 A Yes.

23 Q Did he try to hand you any flex cuffs at any point?

24 A No.

25 Q If he had, would you have taken them from him?

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1 A Yes.

2 Q Okay. I'm going to clear out these circles. If we
3 could finish playing Government's 419.

4 THE COURT: Back on 419?

5 MS. AYERS-PEREZ: Yes, your Honor, back on 419.

6 (Government's Exhibit 419 playing.)

7 Q While this plays, Sergeant Timberlake, was there
8 anything about what people were wearing that day that
9 concerned you?

10 A Well, besides it was cold, some of the protesters were
11 wearing what appeared to be military gear.

12 Q As a Capitol Police officer did that concern you in any
13 way?

14 A Yes.

15 Q Why?

16 A That's something we've never seen or I've never seen on
17 Capitol grounds, that kind of gear. My understanding when we
18 had our intell was supposed to just be peaceful protesters,
19 there might have been ... that's it.

20 Q What did you do after you left the third floor?

21 A Retreated back down to catch up with the rest of the
22 group.

23 Q Where did you go from there?

24 A Over to the Hart Senate building.

25 Q Did you stay there for the rest of the afternoon?

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1 A No, so at that point, Captain Patton took over incident
2 command for Senate Chambers, then put my officers in small
3 groups of two and three and then we retreated back over to
4 the Capitol building through police lines and started
5 retrieving staff that were sheltering in place.

6 Q So there was still staff sheltering in place inside the
7 Capitol at that point?

8 A Yes, we have -- I'm sorry, leadership staff still in
9 the building and we also had what we call some support staff.
10 So Secretary of the Senate, legislative staff on the first
11 floor, Senate wing, and then also had leadership in their
12 particular offices, we still had staff that didn't make it to
13 the Senate floor in time were in their offices.

14 Q Okay. And when you say Captain Patton, are you talking
15 about Sean Patton?

16 A Yes, ma'am.

17 Q What time were you supposed to leave that day?

18 A We were hoping to wrap up by 7 p.m.

19 Q What time did you actually leave that day?

20 A More like midnight.

21 Q And you mentioned you'd been a Capitol Police officer
22 for quite some time now, have you ever seen anything like
23 this?

24 A No, ma'am.

25 MS. AYERS-PEREZ: Your Honor, I pass the witness.

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1 THE COURT: All right, Mr. Burnham. You can
2 probably take the exhibit down unless Mr. Burnham wants it
3 up.

4 MR. BURNHAM: I may ask a question or two about it
5 so if you don't mind leaving it up.

6 THE COURT: If it's okay with you, we can leave it
7 up.

8 MR. BURNHAM: Thank you.

9 CROSS-EXAMINATION BY MR. BURNHAM:

10 Q Good afternoon, Officer. Charles Burnham, I've got a
11 couple questions for you.

12 A Okay.

13 Q I notice that you and your colleagues there appear to
14 be wearing civilian clothes, is that right?

15 A Correct.

16 Q It looks like a blue blazer and slacks I guess you
17 would say?

18 A Blue suit, yes.

19 Q Do you have a tie? I can't even tell, do you have ties
20 on?

21 A Yes.

22 Q You do. Is that your normal attire for working, is
23 that normally what you wear to work, civilian?

24 A Yes.

25 Q Were you carrying a firearm?

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1 A Yes.

2 Q At the, I think at -- during your direct testimony you
3 refer to the situation with yourself and your colleagues
4 being, you know, 20 against 2, is that how you described it?
5 Or 20 against 3 I guess it would be, is that correct?

6 A The crowd kept increasing.

7 Q So that's -- would I be correct in saying that's a
8 dangerous situation to be in with just that few officers
9 having to handle that many people you didn't know who they
10 were, would that be correct?

11 A Yes.

12 Q All right. And the hostile actions from the men in
13 black and the others that make the situation that much more
14 concerning, would that be correct, that they were acting that
15 way?

16 A Yes, that and the fact that we didn't know if they were
17 armed or not.

18 Q Yeah. So it's -- I take it it was a welcome thing that
19 the man in the helmet exerted the influence he did to try and
20 defuse the situation, is that fair?

21 A No.

22 Q Not a welcome thing?

23 A I'm sorry.

24 Q I'm asking whether it was a welcome thing from your
25 perspective that the man in the helmet tried to calm people

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1 down; is that something you were glad he did that?

2 A He wasn't trying to calm people down, he was trying to
3 calm down that guy in black telling him calm down, that's not
4 what we're here for, that's not what we're about.

5 Q That helped to defuse the situation seemingly, is that
6 correct?

7 A Yes.

8 Q Thank you. Could -- would the Government be kind
9 enough to move the video till it's about 23 seconds
10 remaining. So 23 seconds, I think it was. Thank you. You
11 can just let it play, thank you.

12 (Government's Exhibit 419 playing.)

13 THE COURT: This is going to take a minute and a
14 half to get there at this rate.

15 MR. BURNHAM: If you can just pause it there.

16 Right there, you see the woman there in the Trump
17 flag in the bottom right?

18 A With the bicycle helmet, yes.

19 Q That was my question, she appears to have I guess a
20 green bicycle helmet or turquoise bicycle helmet, would you
21 agree with that?

22 A I'm sorry.

23 Q Do you agree she appears to be wearing what appears to
24 be a turquoise bicycle helmet?

25 A Yes.

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1 Q And the person standing immediately in front of her has
2 some kind of helmet as well, would you agree with that?

3 A Yes.

4 Q Looks like it might be, I don't know, a rock climbing
5 helmet or something, that's my best guess, would you agree
6 with that or disagree?

7 A I agree with you.

8 Q Can we just play maybe 10 more seconds.

9 (Government's Exhibit 419 playing.)

10 Q All right, you can stop there, thank you. Can I have
11 the court's indulgence?

12 THE COURT: Certainly.

13 MR. BURNHAM: Thank you, Officer, that's all my
14 questions. No further questions.

15 MS. AYERS-PEREZ: No redirect, your Honor.

16 THE COURT: All right. Thank you very much for
17 coming, Sergeant. And you may be excused.

18 (The witness was excused.)

19 MS. AYERS-PEREZ: We call Maggie-May Humphrey.

20 (Pause in proceedings.)

21 THE CLERK: Good afternoon, ma'am.

22 THE WITNESS: Good afternoon.

23 THE CLERK: Please raise your right hand.

24

25 M A G G I E - M A Y H U M P H R E Y ,

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1 called as a witness and being duly sworn, testifies
2 as follows:

3 THE COURT: Good afternoon, Officer Humphrey.
4 Mr. Meisel.

5 MR. MEISEL: Thank you, Judge.

6 DIRECT EXAMINATION BY MR. MEISEL:

7 Q Officer Humphrey, could you please state your name and
8 spell it for the record?

9 A Sure, first name is Maggie-May, M-a-g-g-i-e, hyphen,
10 M-a-y, H-u-m-p-h-r-e-y.

11 Q By whom are you employed?

12 A Metropolitan Police Department.

13 Q What is your title or position within MPD?

14 A I'm an officer.

15 Q How long have you been employed by the Metro Police
16 Department?

17 A Since August of 2019, so three years and a couple
18 months.

19 Q Okay. So as of January 6, 2021, would it be fair to
20 say you had been an officer for approximately two years?

21 A Approximately, over a year at that point.

22 Q Okay. Prior to your employment with MPD, did you have
23 any sort of previous training, experience in either military
24 or law enforcement?

25 A Yes, I was in the Army.

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1 Q How long were you in the Army?

2 A So I joined in July of 2015, I had medically separated
3 in 2016.

4 Q I'm going to direct your attention to January 6, 2021.
5 Were you working in your capacity as an officer with the
6 Metro Police Department on that day?

7 A Yes.

8 Q Was this a regularly scheduled tour for you?

9 A No. So my regularly scheduled tour of duty is midnight
10 tour, just working patrol on this day, I was working on a
11 civil disturbance unit.

12 Q Okay. So this was a special assignment that you were
13 detailed to, for that date?

14 A Different than my usual assignment, yes.

15 Q Gotcha. And so do you recall what tour of duty you
16 were working that day?

17 A It would have been like similar to the evening tour,
18 early afternoon, until late at night.

19 Q Gotcha. When you reported for duty, did you go through
20 normal routines like roll call?

21 A Yes.

22 Q Was there anything unusual about roll call when you
23 reported for duty on January 6, 2021?

24 A Just that we were expecting a lot of people, it was
25 supposed to be somewhat of a big event, but I don't think

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1 anybody was expecting anything too out of hand.

2 Q Okay. And your unit, what is the -- what is the
3 strength or composition of the unit?

4 A So I was working civil disturbance unit 51 or CDU
5 platoon 51. A platoon is made up of four squads, each squad
6 has seven officers and one sergeant and then there is a
7 lieutenant so 28 officers, four sergeants, one lieutenant
8 makes 33 people make up the platoon.

9 Q Okay. And after roll call, where did your unit deploy
10 to?

11 A So our entire platoon was supposed to be in the area of
12 Black Lives Matter Plaza, I believe it's 16th and I, so all
13 four squads went down, parked somewhat nearby, and then we
14 walked and lined up in the vicinity of BLM Plaza.

15 Q How long would you say that you were posted at BLM
16 Plaza from the time that you arrived there to the time that
17 you left?

18 A It was very brief. Our time down there. I think by
19 the time we had walked down, lined up, I took a phone call
20 for a couple minutes and then we were leaving.

21 Q Okay. And do you recall the approximate time that you
22 arrived at BLM Plaza?

23 A I believe it was sometime -- I'd say between like noon
24 and 2:00. I think around 1:00 but I'm not certain.

25 Q Okay. Were you aware of what it was that triggered a

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1 movement away from that assigned post?

2 A So like I had said, I took a phone call, so I turned my
3 radio down to hear the phone conversation. By the time I had
4 gotten off the phone, I didn't have my radio turned back up,
5 the volume, so when something came out over the radio, it was
6 very obvious that something came out and we needed to leave
7 quickly, but I didn't hear that transmission.

8 Q What made it obvious to you?

9 A Just kind of the look of, I don't know if I want to say
10 shock but there was definitely a look on the officers' faces
11 around me like they were not expecting to hear what they were
12 hearing.

13 Q And after you saw those expressions, what did the
14 officers start doing?

15 A So pretty much everybody turned to their right, facing
16 towards where our vans were parked and actually started
17 running.

18 Q Okay. What did you do?

19 A Followed along, ran with them.

20 Q All right. And from there, I'm assuming everybody
21 loaded up in the vans?

22 A Yes.

23 Q Where did you proceed from there?

24 A So we actually ended up parking within the vicinity of
25 the Capitol building.

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1 Q Okay. And can you describe your initial observations
2 when you arrived at the Capitol building?

3 A Sure. So when we parked, the building was kind of in
4 front of me and to the left. There was a lot of people out,
5 a lot of people in the street, in the lawn, just a lot of
6 people around the Capitol building.

7 Q And what happened when you guys got out of your vans?

8 A So as we started exiting the vans, we were told to put
9 on our full CDU equipment including our helmet, our gas
10 masks, and grab the, you know, riot batons that we carry with
11 us. So everyone immediately got out and started donning all
12 of this equipment.

13 Q So until that point, no one was fully prepared or armed
14 with any of that equipment?

15 A No. So it's typical to leave your helmet and that kind
16 of stuff in the van.

17 Q Is it typical to go out on patrol with that equipment?

18 A No.

19 Q So on this particular day, all the officers that were
20 part of the CDU left their precinct or their headquarters
21 with that equipment with them?

22 A Everyone assigned to the civil disturbance unit, yes.

23 Q Now had you had occasion to go into full gear set, I'll
24 call it, prior to that, at any point during your employment
25 as an officer?

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1 A Aside from training, no.

2 Q Okay. And so the full equipment that includes helmet,
3 gas mask, baton?

4 A Mm-hmm.

5 Q Any other equipment I'm leaving out?

6 A Our gloves, we typically wear gloves that we're given
7 with our CDU equipment that you wouldn't typically wear on
8 patrol.

9 Q Gotcha. And other than your CDU equipment, gear set,
10 are you equipped with body worn camera on that day?

11 A Yes.

12 Q Okay. Was it functioning properly?

13 A Yes.

14 Q And did you at some point activate your body cam?

15 A Yes.

16 Q Do you recall roughly when you activated your body cam
17 in relation to your arrival at the Capitol?

18 A Sometime after we got there, I'm not sure if I did
19 before entering the building or once inside the building.

20 Q Okay. Now, when you arrived at the Capitol and gear
21 up, what happens then?

22 A So after putting on all of our equipment, we were
23 pretty much told to line up single file and march towards the
24 building, so we proceeded kind of through the lawn, kind of
25 up to what I think was a side door. We might have stood

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1 outside on the steps for a couple seconds, but then we were
2 led into the building.

3 Q And when you were led into the building, where was the
4 sort of first area where you were posted?

5 A So once inside the building, we kind of proceeded in
6 from that door and down a hallway to the left which I later
7 in that day learned that that was a hallway towards the
8 Rotunda room.

9 Q And when you arrived there, I'm assuming the rest of
10 your civil disturbance unit is with you?

11 A Yes.

12 Q And what was, what was your assignment once you arrived
13 in that hallway connecting to the Rotunda?

14 A So very quickly, once inside that hallway, we began to
15 like make our first push of the day where we were pushing
16 people through this hallway down the hallway. Again, I
17 wasn't sure where we were pushing them at this time, but
18 everyone just started pushing, so we just pushed.

19 Q Okay. Could you describe just what was happening in
20 that hallway, who were they pushing?

21 A So I'm pretty sure there was some taller people in
22 front of me, I couldn't exactly see the people that we were
23 pushing, but just kind of realizing what was going on around
24 me, the biggest thing that stands out was like all of the
25 flags that decorated the Capitol building were knocked over,

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1 falling on the ground. In between pushing, myself and other
2 officers were trying to stand these flags up, and to me, that
3 was pretty important, that we at least make that right.

4 There was OC spray being deployed in the hallway, and again,
5 just pushing.

6 Q Okay. And we're talking about a line of MPD officers
7 pushing against protesters, just to be clear?

8 A Yes.

9 Q And I assume that these, based on the fact that you
10 were pushing, that the protesters are not willingly moving in
11 the direction that you're trying to get them to go to?

12 A No, we, I mean I know I was pushing with all of my
13 strength, so it was definitely not moving willing people
14 around that building.

15 Q And as you're pushing with several other officers, are
16 you, are you moving freely or are you pretty much sort of
17 dead in your tracks?

18 A There was a lot of resistance, I know we did make some
19 movement, but there was a lot of resistance.

20 Q Okay. At some point do you get reassigned from that
21 position?

22 A Yes.

23 Q How long would you say that you were pushing before you
24 were retasked?

25 A Time moved weird that day. I don't know that I was in

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1 that hallway for more than 15 minutes before being
2 reassigned. In my head that's how long it felt.

3 Q Okay. And can you describe what happened that you were
4 retasked?

5 A So there was another officer, there might have been
6 more than one, but somebody who wasn't dressed in an MPD
7 patrol uniform or CDU uniform had come up and was speaking
8 with our lieutenant, Lieutenant Sheldon, and he very quickly
9 just looking around picked out a couple of us and said, you
10 know, you're going with whoever that was, and he said
11 something to them along the lines of, you know, you're in
12 charge, tell them what you need them to do.

13 Q And so this was a Capitol Police officer that you were
14 being transferred over to?

15 A It could have been. There was definitely Capitol
16 Police officers around at that time.

17 Q Okay. And from your platoon or your civil disturbance
18 unit, was it just you or were there other officers from your
19 unit that were being retasked?

20 A I believe there was three other officers off the top of
21 my head, I know Officer Cynthia Rios was there, a male
22 officer, Officer Singh was there, and then another female
23 officer, Officer Daniels was there also.

24 Q Okay. Where were you led to at this point?

25 A So outside of this hallway, it was pretty much a short

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1 walk to another hallway in between a staircase, standing
2 there there was a staircase that went up and a staircase that
3 went down. To the left of me there was a big window where I
4 could see all of these people gathering up on the lawn. I
5 could hear the yelling from outside and to the right of me it
6 looked like, kind of like offices or rooms down the hallway.

7 Q Okay. And at some point were you sort of assigned to a
8 fixed location?

9 A Yes.

10 Q Okay. And that location, do you recall what level of
11 the building you were on?

12 A I'm not exactly sure of the layout of the building, but
13 I felt like either there was a basement below us, or another
14 floor down one level that led to outside, I could hear
15 protesters, people outside pounding on the door, and then
16 there was a floor above us so I would guess ground level or
17 the middle floor of the building.

18 Q Okay. Were you near a window?

19 A Yes.

20 Q And did you have an opportunity to look out that
21 window?

22 A Yes.

23 Q Okay. And so, and when you looked out that window,
24 were you looking at the ground or were you above --

25 A I was above the ground.

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Maggie-May Humphrey - Direct

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1 Q And could you describe the area around you?

2 A Yeah. So the stairs that went up to some kind of
3 doorway, I wasn't sure what kind of room was up there, I
4 think I was under the impression that that's where, you know,
5 Senators or important people in my mind were up --

6 MR. BURNHAM: Object to speculation.

7 THE COURT: I'm sorry.

8 MR. BURNHAM: I take the witness' answer to be
9 speculating, there might have been Senators.

10 THE COURT: I'll allow her to speculate on what she
11 believed.

12 MR. BURNHAM: Thank you.

13 A Below, again, there was another door that, to me I
14 thought led outside, I heard protesters out there. Again to
15 the left, the window, from the window, I could see the lawn
16 and to the right a lot of doors down the hallway.

17 Q Okay. So you mentioned there were a set of stairs?

18 A Mm-hmm, yes.

19 Q So, and coming down these stairs, did you see other
20 officers, protesters?

21 A Yes. There was officers kind of at different times
22 walking through different areas, Capitol police officers, and
23 then at some point, what looked like a protester person
24 dressed in plain clothing came down from the stairs.

25 Q Okay. Have you had an opportunity to review a clip of

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1 body cam that we showed you during preparation for this
2 trial?

3 A Yes.

4 Q Okay. When you viewed it, did you recognize it as
5 being from your body cam video?

6 A Yes.

7 MR. MEISEL: Okay. This is already received in
8 evidence, your Honor, as Exhibit 800, I'd like to publish it
9 to the witness.

10 THE COURT: You may.

11 (Government's Exhibit 800 played.)

12 Q Is that video that we just played, that was a clip from
13 your body cam?

14 A Yes.

15 Q It appeared to fairly and accurately show what you
16 observed while posted somewhere inside the U.S. Capitol on
17 January 6, 2021?

18 A Yes.

19 Q Give me one moment, Officer Humphrey.

20 Officer Humphrey, thank you for your time,
21 Mr. Burnham might have some questions for you.

22 THE WITNESS: Sure.

23 THE COURT: Mr. Burnham, if you have any questions.

24 MR. BURNHAM: Yes, your Honor, thank you.

25 CROSS-EXAMINATION BY MR. BURNHAM:

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Maggie-May Humphrey - Cross

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1 Q Good afternoon, Officer, I'm Charles Burnham.

2 A Good afternoon.

3 Q So this video we just saw, you could hear there some
4 noise in the background that didn't appear to be coming from
5 yourself or the officers?

6 A Yes.

7 Q You agree with that? And depending on what part of the
8 Capitol you were in, it can produce a, sort of an echoing
9 effect, would that be right?

10 A That could be right.

11 Q And so the individual that walked down, I don't think
12 it's -- it's not you that goes down the hall, it's another
13 officer, is that right, and you're there as well?

14 A You can see in my camera that's Officer Daniels, I know
15 I started running down the hallway.

16 Q And so at a certain point yourself and Officer Daniels
17 just stop and don't go any farther, maybe when you're about
18 halfway down that hallway, is that right?

19 A Yes.

20 Q And then you go back to wherever your post was?

21 A Yes.

22 Q Okay. And I take it that you didn't get on the radio,
23 I didn't see it, and say we've got someone going down this
24 hallway, send in people to chase him or anything like that,
25 correct?

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Maggie-May Humphrey - Redirect

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1 A No.

2 Q And the individual walking down there, he didn't appear
3 to change his pace at all, he continued walking more or less
4 consistent speed, would that be right?

5 A I don't recall if he sped up or how quickly he was
6 going, there was a lot of confusion, but he definitely
7 continued down the hallway throughout the building.

8 Q Well, at any rate he didn't break into a run, you agree
9 with that I'm sure?

10 A Sure.

11 MR. BURNHAM: Thank you.

12 THE COURT: Mr. Meisel?

13 MR. MEISEL: Just have one question for redirect.

14 REDIRECT EXAMINATION BY MR. MEISEL:

15 Q Officer, you have any reason to question the accuracy
16 of the date/time stamp on your video? Can you see it?

17 A January 6 at 14:57 -- no.

18 MR. MEISEL: Thank you.

19 THE COURT: Thank you for coming, Officer Humphrey,
20 you may step down.

21 (The witness was excused.).

22 MS. AYERS-PEREZ: We call John Moore.

23 THE COURT: All right.

24 THE CLERK: Good afternoon, sir, please raise your
25 right hand.

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John Moore - Direct

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1 J O H N M O O R E , called as a witness
2 and being duly sworn, testifies as follows:

3 THE COURT: Good afternoon, Special Agent Moore.

4 THE WITNESS: Good afternoon, your Honor.

5 THE COURT: Ms. Ayers-Perez.

6 MS. AYERS-PEREZ: Thank you, your Honor.

7 DIRECT EXAMINATION BY MS. AYERS-PEREZ:

8 Q Good afternoon. Can you please state and spell your
9 name for the record?

10 A My name's John Moore, spelled J-o-h-n, M-o-o-r-e.

11 Q Where do you work?

12 A For the Federal Bureau of Investigation.

13 Q What do you do for the Federal Bureau of Investigation?

14 A I'm a special agent.

15 Q How long you been a special agent with the FBI?

16 A For little over six years.

17 Q What did you do before that?

18 A I was an active duty Army officer for six years after
19 college, and then I had a brief private sector manufacturing
20 career about four years while I was processing in the Bureau.

21 Q What was your rank when you were in the Army?

22 A I'm currently serving the Army Reserve and I'm a
23 lieutenant colonel.

24 Q Okay. And before the Army, what, did you go to
25 college?

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John Moore - Direct

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1 A I did.

2 Q Did you get a degree?

3 A I did. I completed my undergrad in 2004, it was ROTC
4 so that's what I was doing immediately before the Bureau and
5 since got a master's degree in political science.

6 Q Okay. Are there any particular type of cases you work
7 on with the FBI?

8 A I started out working white collar investigations my
9 first couple years and I've been working domestic terrorism
10 for the last -- since 2020.

11 Q Okay. And were you working with the FBI on January 6,
12 2021?

13 A I was.

14 Q And if I just call it January 6th from here on out
15 you'll know what that means?

16 A Yes, ma'am.

17 Q Okay. Which FBI office did you work at?

18 A The Dallas field office.

19 Q Have you worked there for the entirety of your time
20 with the FBI?

21 A I have.

22 Q Do you still work at the Dallas field office?

23 A I do.

24 Q And that's Dallas, Texas, right?

25 A That's correct.

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1 Q All right. Were you aware of what happened in
2 Washington, D.C. on January 6?

3 A I'm aware.

4 Q Were you aware back on January 6th and the days
5 afterwards?

6 A I was aware immediately that day.

7 Q Did the FBI in Dallas investigate any cases arising out
8 of what happened on January 6th at the Capitol?

9 A We did.

10 Q Did you get assigned any cases?

11 A I did.

12 Q Did you get assigned any cases involving a Larry Brock?

13 A I did.

14 Q When was that?

15 A On the morning of January 9th, 2021.

16 Q And had you identified Mr. Brock at that point?

17 A I had.

18 Q How did you do that?

19 A Multiple ways. So that January 9th was a Saturday, was
20 a very interesting time for the FBI. We had taken in
21 numerous complaints from the public identifying Mr. Brock as
22 being the person depicted on the Senate floor in the Capitol
23 on January 6, 2021.

24 Q So would it be fair to say people were calling in tips
25 identifying Mr. Brock?

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1 A That's correct.

2 Q There was more than one of those?

3 A Yes, ma'am.

4 Q If you had to guess, if you could estimate, a lot or a
5 little?

6 A There were at least five.

7 Q Okay. So what do you do at this point?

8 A So we have to open a case, so we, or I reviewed the
9 multiple complaints and open source information available and
10 then put that into an FBI case and opened a case on
11 Mr. Brock.

12 Q As part of opening a case on Mr. Brock, did you become
13 aware of his background or education or occupation at this
14 time?

15 A I did.

16 Q What did you become aware of?

17 A I became aware of the fact that he had attended the
18 United States Air Force Academy, I believe graduated in the
19 class of 1989 and that he held the rank of lieutenant colonel
20 in the Air Force.

21 Q Okay. Was he a current, was he currently in the Air
22 Force at that time or had he retired?

23 A He had since retired.

24 Q Do you know if he was employed at that time?

25 A I did, I believed he was employed at Hillwood Airways

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1 and I also believed that day I spoke with Hillwood Airways
2 and they informed me that he was no longer employed.

3 Q What did you do at that point? Actually strike that,
4 let me ask you this. Was Mr. Brock charged at any point?

5 A He was. By the end of the day on January 9th we had a
6 complaint out of this district in Washington, D.C. with an
7 arrest warrant for Mr. Brock.

8 Q Who was to execute that arrest warrant?

9 A The Dallas FBI.

10 Q And so did you execute that arrest warrant?

11 A I did.

12 Q When was this?

13 A On Sunday, January 10th, 2021.

14 Q Okay. And tell me about that.

15 A Because of the exigency of the circumstances having,
16 Mr. Brock having partaken in a riot at the U.S. Capitol, it
17 was our office's judgment that he needed to be arrested
18 quickly, so we had a -- referred to as a ping warrant on his
19 phone. The ping warrant was only giving us marginally
20 accurate data in that it was, ping warrants come with
21 different degrees of certainty basically down to the meter as
22 to how close the ping is in time and space to where the phone
23 or the person actually is, so we didn't know exactly where
24 Mr. Brock was. We knew he was pinging in Tarrant County and
25 we eventually called him to make the arrest.

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1 Q And as a fellow Texan myself, just to clarify, Tarrant
2 County is not in Dallas, right?

3 A That's correct, it's adjacent, it's the county -- well,
4 it's where Fort Worth is so it's just west of Dallas County.

5 Q Got it. Did you eventually make contact with Mr. Brock
6 that day?

7 A I did.

8 Q Tell us about that.

9 A We didn't -- I called Mr. Brock on his cell phone. I
10 initially got a call from his civil attorney, I spoke to that
11 attorney, as did a United States Attorney, or AUSA in Texas
12 in the Northern District of Texas, so we had three-way call.
13 I also spoke to a former girlfriend of Brock's. I believe I
14 also spoke to Mr. Brock at some point that day so it was a
15 very fluid situation. I explained what was going on to the
16 attorney, the AUSA explained what was going on to the
17 attorney, and we eventually compelled Mr. Brock to
18 self-surrender at the Grapevine, Texas Police Department.

19 Q Okay. Did you go to the Grapevine, Texas Police
20 Department?

21 A I did.

22 Q Tell me what happened there.

23 A I was -- I believe I was speaking directly to Mr. Brock
24 on the phone, I said, hey, come in and park on, you know, one
25 side of the parking lot. He did that. He was approached by

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1 our SWAT team, he was compliant and was taken into custody.

2 Q Did Mr. Brock have anything on him at that point?

3 A He had his mobile telephone.

4 Q And did that come into your custody?

5 A It did.

6 Q And how was that?

7 A He handed it over to the arresting agents.

8 Q Was that arrest warrant the only warrant you had that
9 day?

10 A No.

11 Q What else did you have?

12 A We had a ping warrant for his phone that I previously
13 described and we had a search warrant for his residence.

14 Q Okay. Did you execute that search warrant?

15 A I did.

16 Q And did you find anything -- what were you looking for
17 there?

18 A We were looking for, I mean first and foremost, weapons
19 of any kind that can be used to carry out additional attacks
20 against the Government or others, as well as evidence linking
21 him to the crime at hand.

22 MR. BURNHAM: Your Honor, I object to that answer,
23 move to strike the answer of additional attacks against the
24 government with weapons --

25 THE COURT: Well, that's what he was looking for,

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1 so overruled.

2 Q What else were you looking for, Agent Moore?

3 A Other electronic devices, computers, telephones, other
4 things that may have had communications on them and then the
5 items that he was depicted wearing at the Capitol on
6 January 6th.

7 Q Did you seize any items related to January 6th at his
8 residence?

9 A Yes, ma'am.

10 Q Did you bring any items that you seized here to court
11 today?

12 A I did.

13 Q And what were those items?

14 A Excuse me. I believe it was two mobile telephones,
15 cell phones that we found, some notebooks, the jacket that
16 Mr. Brock wore at the Capitol that day, hiking boots that
17 Mr. Brock wore -- hiking boots that we recovered, I'm not
18 certain if they were worn at the Capitol or not. One of the
19 patches from his body armor that he's depicted wearing at the
20 Capitol, and some airline tickets, as well as I believe a
21 luggage receipt from his trip to and from Washington, D.C.

22 Q And what were those airline tickets for?

23 A I believe they were tickets reflecting a flight out on
24 January 5th and then returning to DFW on January 7th, 2021.

25 MS. AYERS-PEREZ: Your Honor, we have a

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1 stipulation, it's Government's Exhibit Number 707, this is in
2 regards to the physical items obtained in the search of
3 Mr. Brock's house, just stipulating that they've been in the
4 custody of the FBI from the time of their seizure and that we
5 stipulate to the chain of custody.

6 THE COURT: All right. Without objection, because
7 there's a stipulation, Government, the Joint Exhibit 707 will
8 be admitted.

9 Q Agent Moore, you've been in the courtroom the whole day
10 today, right, you've seen all the videos and everything we've
11 introduced here?

12 A That's correct.

13 Q Okay. Did you remember the video of Mr. Brock at the
14 door to the Senate Lobby with what appeared to be some keys
15 in his hand?

16 A I do.

17 Q And were you aware of that video pretty early on in
18 your investigation?

19 A I was.

20 Q Did y'all recover those keys at his residence?

21 A No.

22 Q What about the helmet he was wearing?

23 A No, we did not.

24 Q And what about the vest he was wearing?

25 A We did not recover that either.

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1 Q There appeared to be three patches on his vest, what
2 about the other two patches?

3 A We did not recover those patches.

4 MS. AYERS-PEREZ: Okay. Your Honor, may I approach
5 the witness?

6 THE COURT: You may.

7 Q And Agent Moore, did you bring the blue bin right over
8 there with you today?

9 A Yes, ma'am.

10 Q And does that bin contain the -- a few of the items we
11 just spoke about?

12 A Yes, it does.

13 MS. AYERS-PEREZ: Now may I approach the witness.
14 Thank you, your Honor.

15 All right, Agent Moore, if I could borrow your
16 microphone as well, make sure everybody can hear me. I'm
17 going to show you what we marked as Government's
18 Exhibit Number 1, do you recognize this?

19 A I do.

20 Q What is this?

21 A This is a black-and-white jacket that Mr. Brock was
22 depicted wearing at the Capitol on January 6th.

23 Q Where did you recover this from?

24 A In his apartment.

25 Q Okay. And when was that?

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1 A On January 10th, 2021.

2 Q Will you open this and show it to us.

3 A (Witness complies.)

4 MS. AYERS-PEREZ: Your Honor, I move to admit
5 Government's Exhibit 1 into evidence.

6 THE COURT: Any objection?

7 MR. BURNHAM: No, your Honor.

8 THE COURT: Government 1 is admitted. Without
9 objection.

10 Q All right, Agent Moore, I'm going to show you this bag
11 has been marked as Government's 2 through 5, do you recognize
12 this bag?

13 A I do.

14 Q What's inside that bag?

15 A It's labeled trash contents, boarding pass, camouflage
16 neck gaiter and bag tag and patch so it's all those items.

17 Q Why is it labeled trash contents?

18 A Because at least some of the contents were found in the
19 trash.

20 Q Okay. Can you go ahead and open that for us.

21 A (Witness complies.)

22 Q So here we're looking at -- what is this?

23 A This is, excuse me, this is a Velcro patch that's a
24 Punisher logo set to the Texas flag.

25 Q And then here?

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1 A This is a airline ticket from Washington Reagan Airport
2 to Dallas Forth Worth Airport on January 7th.

3 Q Okay. And what else?

4 A This is a luggage tag from American Airlines from what
5 I believe to be the same flight on January 7th.

6 Q And lastly?

7 A A neck gaiter that was depicted on Mr. Brock at the
8 Capitol.

9 MS. AYERS-PEREZ: Your Honor, at this time I move
10 to admit Government 2 through 5 in evidence.

11 THE COURT: Without objection, Government 2 through
12 5 are admitted.

13 Q Thank you, Agent Moore. Moving back to the phone we
14 had talked about. What happened to that phone after you
15 collected it from Mr. Brock on January 10th?

16 A I took it to the North Texas Regional Computer
17 Forensics Laboratory which is where our phone examiners work
18 and they made an extraction of that phone to be used as, a
19 review by us.

20 Q Okay. When you say extraction of the phone, what does
21 that typically show us?

22 A It can vary depending on how successful the extraction
23 is but if, you know, if it's a smart phone, in this case it
24 was, it can have text messages and e-mails and pictures and
25 videos and contents of any app that a person has in their

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1 phone.

2 Q Were they able to successfully extract the phone that
3 Mr. Brock had with him?

4 A They were.

5 Q And did you go through the extraction of that phone?

6 A I did.

7 Q Do you have reason to believe the extraction, that
8 the -- that that phone belongs to Mr. Brock?

9 A I believe it belongs to him.

10 Q Was there anything on the phone that made you believe
11 that this phone belonged to Mr. Brock?

12 A Yes.

13 Q What was that?

14 A E-mails, e-mails signed by him, pictures of him, and
15 communications that appeared to be sent from him.

16 MS. AYERS-PEREZ: Okay. Your Honor, at this time,
17 to make it easier, I would move to admit Government's 306
18 through 326.

19 THE COURT: All right, so Government's 306 through
20 326.

21 MR. BURNHAM: Could I have a moment, your Honor?

22 THE COURT: Certainly.

23 MR. BURNHAM: No objection to those.

24 THE COURT: 306 through 326 are admitted.

25 Q All right, Agent Moore. I'm going to show you what's

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1 marked as Government's 306. Do you recognize this?

2 A I do.

3 Q What are we looking at here?

4 A It's a picture of demonstrators on January 6th.

5 Q Where was this recovered from?

6 A I believe it was recovered from Mr. Brock's phone.

7 Q Okay. Were there other photos and/or videos recovered
8 from his phone?

9 A Yes.

10 Q All right. I'm going to show you what's been marked as
11 Government's 307. What are we looking at here?

12 A That's a picture of a helmet, a military style helmet
13 and body armor in a suitcase.

14 Q Does that look familiar to what Mr. Brock is wearing on
15 January 6th?

16 A It does.

17 Q Okay. And where was this recovered from?

18 A His phone.

19 Q And that's Mr. Brock's phone?

20 A That's correct.

21 Q I'm going to show you what's been marked as
22 Government's 308. Do you recognize this?

23 A I do.

24 Q And what is this?

25 A That is a picture of him wearing the body armor with

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1 the three patches we've described previously, taking a
2 picture with his own phone.

3 Q Is that something we would commonly refer to as a
4 selfie?

5 A Yes.

6 Q And when you say him, you mean Mr. Brock?

7 A That's correct.

8 Q Where was this recovered from?

9 A From his phone.

10 Q Mr. Brock's phone?

11 A Yes.

12 Q Okay. I'm going to show you Government's Exhibit 309.
13 What are we looking at here, Agent Moore?

14 A It appears to be the January 6th rally in Washington,
15 D.C.

16 Q And where was this recovered from?

17 A From his phone, Mr. Brock's phone.

18 Q Okay. I'm going to show you what's been marked as
19 Government's Exhibit 310. And here, Agent Moore?

20 A That is a picture of people on the street in I believe
21 Washington, D.C.

22 Q Where was this recovered from?

23 A From Mr. Brock's phone.

24 Q I'm going to show you what's been marked Government's
25 311. What are we looking at here, Agent Moore?

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John Moore - Direct

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1 A People outside the United States Capitol.

2 Q And where was this recovered from?

3 A Excuse me, Mr. Brock's phone.

4 Q I'm going to show you what's been marked as
5 Government's 312. What are we looking at here, Agent Moore?

6 A It is a -- looks like a screenshot of a flight that was
7 booked on American Airlines to Dulles Airport on January 5th,
8 2021.

9 Q Is Dulles Airport in the Washington, D.C. area?

10 A It is.

11 Q Okay. And where was this recovered from?

12 A Mr. Brock's phone.

13 Q Okay. And is that Mr. Brock's name there at the top?

14 A Yes.

15 Q I'm going to show you what's been marked as
16 Government's Exhibit 313. What am I looking at here, Agent
17 Moore?

18 A That's a selfie of Mr. Brock at the rally on
19 January 6th, 2021.

20 Q Okay. And is he wearing -- is that the vest I see?

21 A Yes, it's the vest and the jacket that we have just
22 previously discussed.

23 Q Okay. And I'm going to mark here on the screen, my
24 circle will come up in red. What is that that I circled
25 there on his vest?

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John Moore - Direct

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1 A That's the Punisher patch that we just introduced into
2 evidence.

3 Q Okay. So that's identical to what you found there in
4 his apartment?

5 A That's correct.

6 Q Where was this photo recovered from?

7 A His phone.

8 Q Mr. Brock's phone?

9 A That's correct.

10 Q I'm going to clear the screen and I'm going to pull up
11 what's marked as Government's Exhibit Number 314. What are
12 we looking at here, Agent Moore?

13 A It's a picture from the January 6th, 2021 rally in
14 Washington, D.C.

15 Q And who's that on the screen that we see?

16 A Former President Trump.

17 Q And where was this recovered from?

18 A Mr. Brock's phone.

19 Q Okay. I'm going to show you what's been marked as
20 Government's Exhibit 315. What are we looking at here, Agent
21 Moore?

22 A It's a picture of riot police outside the Capitol on
23 January 6th, 2021.

24 Q And where was this, where was this picture recovered
25 from?

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1 A Mr. Brock's phone.

2 Q All right. I'm going to show you what's been marked as
3 Government's Exhibit 316. What are we looking at here, Agent
4 Moore?

5 A Another picture of President Trump on a television
6 screen January 6th, Stop the Steal Rally, January 6th, 2021.

7 Q Where was this recovered from?

8 A Mr. Brock's phone.

9 Q All right. I'm going to show you what's been marked as
10 Government's Exhibit 317. And what are we looking at here,
11 Agent Moore?

12 A It's another picture of Mr. Trump -- or correction,
13 President Trump speaking at the January 6 rally from
14 Mr. Brock's phone.

15 Q Okay. I'm going to show you what's been marked as
16 Government's Exhibit 318. And what is this?

17 A That is a picture of Mr. Brock on the Senate floor.

18 Q And where was this recovered from?

19 A From -- I believe it was recovered from Mr. Brock's
20 phone.

21 Q Okay. I'm going to show you what's been marked as
22 Government 319. And what is this?

23 A That's a picture of the U.S. Capitol building.

24 Q Okay. And there are a number of protesters or rioters
25 there in that picture, is that right?

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1 A That's correct, it's from the January 6th riot at the
2 Capitol, 2021.

3 Q Does this appear to be taken from the inside or outside
4 of the Capitol building?

5 A It appears to be taken from inside the Capitol
6 building.

7 Q Can you see the window frame there on the right side of
8 the picture?

9 A Yes.

10 Q And where was this recovered from?

11 A Mr. Brock's phone.

12 Q I'm going to show you what's been marked as Government
13 320. Can you tell us what we're looking at here, Agent
14 Moore?

15 A It's another picture of demonstrators at the
16 January 6th, 2021 rally.

17 Q And where was this picture recovered from?

18 A Mr. Brock's phone.

19 Q Okay. I'm going to show you what's been marked as
20 Government's Exhibit 321. And what are we looking at here,
21 Agent Moore?

22 A A picture of demonstrators somewhere on a street in
23 Washington, D.C. on January 6, 2021.

24 Q And where was this recovered from, Agent Moore?

25 A Mr. Brock's phone.

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1 Q Okay. I'm going to show you what's been marked as
2 Government Exhibit 322.

3 THE COURT: Maybe.

4 (Government's Exhibit 322 played.)

5 Q What was that a video of, Agent Moore?

6 A That was a video of President Trump speaking at the
7 January 6 Stop the Steal Rally, 2021.

8 Q And where was that video recovered from?

9 A From Mr. Brock's phone.

10 Q I'm going to show you what's been marked as Government
11 Exhibit 323.

12 (Government's Exhibit 323 played.)

13 Q What was that a video of, Agent Moore?

14 A That was a video of protesters on January 6th, 2021.

15 Q Was that at that Stop the Steal Rally?

16 A It appeared to be so.

17 Q Where did you recover that video from?

18 A Mr. Brock's phone.

19 Q I'm going to show you Government's Exhibit 324.

20 (Government's Exhibit 324 played.)

21 Q What were we looking at there, Agent Moore?

22 A Demonstrators at the January 6, 2021 Stop the Steal
23 Rally.

24 Q Where was that recovered from?

25 A Mr. Brock's phone.

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1 Q Show you Government's 325.

2 (Government's Exhibit 325 played.)

3 Q Where was that recovered from, Agent Moore?

4 A Mr. Brock's phone.

5 Q And what was that a picture or or a video of?

6 A It was a video of Mr. Brock wearing body armor.

7 Q Short video, pausing it there at the one-second mark.

8 What is Mr. Brock wearing there in that video?

9 A He's wearing headphones, sweatshirt, and body armor.

10 Q Okay. Does that look similar to the body armor he was
11 wearing on January 6th?

12 A It looks similar but the color is off. I don't know if
13 it's the lighting but this looks kind of coyote tan and his
14 other body armor was green.

15 Q Then I'm going to show you what's been marked as
16 Government's Exhibit 326.

17 (Government's Exhibit 326 played.)

18 Q That was a quick one, Agent Moore. Do you -- what are
19 we looking at here, Agent Moore?

20 A It's a video of President Trump speaking at the
21 January 6th, 2021 Stop the Steal Rally.

22 Q And where was this recovered from?

23 A Mr. Brock's phone.

24 Q And I'm not sure I asked that but for 325, was that
25 also recovered from Mr. Brock's phone?

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1 A Which one was 325?

2 Q The one with the sweatshirt and the body armor.

3 A Yes.

4 Q Okay. At any point in your investigation of Mr. Brock
5 did you become aware of any social media usage by Mr. Brock?

6 A Yes.

7 Q What was that?

8 A Became aware pretty quickly that he used Facebook.

9 Q And how did you become aware of that?

10 A Some of the people that made tips or complaints to the
11 FBI stated that they were Facebook friends of his and that he
12 used some pretty heated rhetoric on Facebook.

13 Q Okay. And did you receive any sort of information to
14 help you identify Mr. Brock's Facebook?

15 A Yes.

16 Q What did you receive?

17 A Multiple people told us that his Facebook --

18 MR. BURNHAM: Object to hearsay.

19 MS. AYERS-PEREZ: Your Honor, it doesn't --

20 THE COURT: It's overruled.

21 Q Go ahead, Agent Moore.

22 A Well, multiple people told me that his Facebook user
23 name was Torch Flyer.

24 Q Okay. And what did you do with that information?

25 A We submitted a search warrant to Facebook for the

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1 contents of that account.

2 Q And that's the account with the user name, was is Torch
3 Flyer or Torch Flyer 10 or --

4 A It's just Torch Flyer but it's also associated with his
5 phone number.

6 Q Okay. And so what did you get back from Facebook?

7 A We got back content of numerous posts, direct messages,
8 and the various chat functions that are present on the
9 Facebook application.

10 Q Did you review that information you received from
11 Facebook?

12 A I did.

13 Q Was it a lot or a little bit that came back?

14 A I mean, not as much as other people I've dealt with,
15 more than others.

16 Q Okay. Was there any information that you reviewed that
17 helped you determine that this account belonged to Mr. Brock?

18 A There was.

19 Q And what was that?

20 A The phone number associated with it was the phone
21 number we knew to be Mr. Brock's. The user name associated
22 with the account was a user name that multiple witnesses had
23 said was Mr. Brock's and then some of the witnesses who had
24 spoken about their conversations with him, we could find
25 those conversations to back them up.

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1 Q Okay. Were there any other phone numbers other than
2 that one associated with the account?

3 A Not that I know of.

4 MS. AYERS-PEREZ: Your Honor, we have a
5 stipulation, Government's Exhibit Number 706, it includes the
6 handle, e-mail address and phone number of Mr. Brock, and the
7 stipulation is that the Facebook returns includes direct
8 messages, content posts, pictures, and videos produced by
9 Facebook for the time period November 1st, 2020 through
10 January 13, 2021 are authentic, accurate, and exact copies
11 from his account.

12 THE COURT: All right. That is stipulation number
13 706 and as such, it is admitted into evidence.

14 MS. AYERS-PEREZ: And your Honor, we're going to
15 get into 900 series at this point I know this is the series
16 that Mr. Burnham has some objections to all but four of them.

17 THE COURT: I think you're going to have to do them
18 one by one rather than try to preadmit all of them unless
19 there are some that you know there is no objection to.

20 MS. AYERS-PEREZ: There are four but they're at the
21 very end so I'll go one by one until we hit them.

22 THE COURT: All right.

23 Q So I'm going to start with Government's Exhibit 900.

24 THE COURT: Mr. Burnham, I'm going to allow the
25 exhibit to be shown to me in order for me to make any ruling

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1 on any objection. Normally the fact finder would not see the
2 exhibit but in this instance, I need to see it in order to
3 rule on the objection.

4 MR. BURNHAM: I understand, your Honor. We have an
5 objection to 900.

6 THE COURT: Thank you.

7 Q All right, Agent Moore. Do you see what's been marked
8 as Government's Exhibit 900?

9 A I do.

10 Q Do you know that to be part of the Facebook search
11 warrant return you received from Mr. Brock's Facebook
12 account?

13 A I do.

14 MS. AYERS-PEREZ: Your Honor, I would --

15 MR. BURNHAM: So I object to this again on 403
16 grounds. It's, it appears to be in quotation marks, "A
17 revolution every now and then is a good thing," sort of
18 reminds me of a Thomas Jefferson quote we learned about in
19 elementary school and so I think it's just general political
20 back and forth on Facebook. It doesn't refer to January 6th
21 and even taking the worst possible view of the evidence we've
22 seen so far, it wasn't revolutionary activity, so --

23 THE COURT: All right, just a second.

24 All right. Seems to me, consistent with something
25 that you just said, that the relevance of this particular

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1 communication from the Facebook account is pretty low, pretty
2 minimal, but also, the prejudice is pretty low, and I think
3 when you weigh all of that, first of all, even minimal
4 relevance is sufficient to get into evidence, and when you
5 then assess the prejudice versus the relevance, the test is
6 really weighted in favor of admission and I think while both
7 the relevance and the prejudice are pretty low, I think
8 because of the way the 403 test is structured, the evidence
9 can be admitted and I overrule the objection.

10 MS. AYERS-PEREZ: Your Honor, I move to admit
11 Government's 900.

12 THE COURT: And I overruled the objection and
13 therefore it is admitted.

14 MS. AYERS-PEREZ: Thank you, your Honor.

15 Q Agent Moore, do you see what we see there on the
16 screen?

17 A I do.

18 Q All right. What date is this?

19 A November 7th, 2020.

20 Q And is this a comment or a message or what is it that
21 we're looking at?

22 A It is a comment that Mr. Brock made on that date.

23 Q And how do you know it's Mr. Brock?

24 A Because it says Torch Flyer commented on a post
25 November 7th, 2020.

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1 Q And do you know Torch Flyer to be Mr. Brock?

2 A I do.

3 Q Okay. And what does it say after what you just read?

4 A "A revolution every now and then is a good thing; it is
5 time."

6 Q Okay. Moving on to Government's Exhibit Number 901.

7 THE COURT: Will there be an objection to 901?

8 MR. BURNHAM: Yes, on generally the same basis as
9 900, it's similar material.

10 THE COURT: All right. Let me read it.

11 (The Court reviewing the exhibit.)

12 THE COURT: The same assessment. The relevance is
13 pretty low, it's a full two months before the January 6th
14 events, it doesn't refer to the January 6th, but it has
15 marginal relevance with respect to intent, and the prejudice
16 is not very high, and I can certainly take account of what is
17 said here and view it through a proper filter, and I think
18 for that reason, I don't think that the probative value is
19 substantially outweighed by prejudice under 403 and therefore
20 the objection is overruled, and 901 is admitted.

21 Q What are we looking at here, Agent Moore?

22 A We're looking at a series of posts made by Mr. Brock on
23 November 8th, 2020.

24 Q Okay. With the first post, can you read it to us?

25 A Yes, it says, "Facebook doesn't want you to see this as

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1 they continue to aid the Demonrats in election theft."

2 Q What do you know Fakebook to be?

3 A I believe it's a derogatory term for Facebook.

4 Q What about Demonrats?

5 A I believe it's a derogatory term for Democrats.

6 Q What about the next message?

7 A Also sent on November 8th, 2020, "Why would the general
8 lie? This election is being stolen."

9 Q And the last message?

10 A Also sent on November 8th, 2020, "Biden outperformed
11 Obama? Right. I have said it before and I will say it
12 again. If the President calls, I will answer #oathkeeper."

13 Q What is a hashtag?

14 A Hashtag is kind of a way of showing support or linking
15 yourself to a thing or group or something.

16 Q And what is Oath Keeper?

17 A Oath Keepers is a militia group made up primarily of
18 law enforcement and military personnel, both currently
19 serving or who have served in the past, and the foundation of
20 the group is that this group of individuals at one time took
21 an oath to defend the Constitution against enemies foreign
22 and domestic and they have formed a little militia to
23 continue to stand ready to defend their beliefs against who
24 they perceive to be enemies of the Constitution, foreign and
25 domestic.

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1 Q Okay. I'm going to pull up what's been marked as
2 Government's 902.

3 THE COURT: That's 901 again.

4 MR. BURNHAM: Same objection to 902, it's general
5 political speech, fairly remote in time.

6 THE COURT: Thank you, Mr. Burnham. Once it's
7 enlarged, I will read it so I can rule. But it's
8 disappeared.

9 MS. AYERS-PEREZ: Can you zoom in? Can you just
10 zoom in from here because this is the right one.

11 THE COURT: Let me read it, please.

12 (The Court reviewing the exhibit.)

13 THE COURT: I have to say, as to this one, the
14 first message is not really tagged to anything specific to
15 January 6th or what the conspiracy being asserted is, and the
16 second message outside the context of events on January 6th,
17 this is again two months beforehand, just talks about fraud
18 and relates what's happening in vote counts so the relevance
19 here is really quite minimal. I'll allow the Government to
20 tell me why they think this is particularly relevant.

21 MS. AYERS-PEREZ: Well, your Honor, the reason, and
22 we would surmise the reason that Larry Brock was there on
23 January 6th and so many people were there is because they
24 believed the election was stolen. January 6th is when
25 Congress is certifying the votes of the election, and I

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1 realize this is almost two months before January 6th, but
2 it's only six days after the election. That's the basis of
3 January 6th and the basis of the counting of the Electoral
4 College votes and it's this election that's the reason why
5 Larry Brock is so upset and why Larry Brock is there at the
6 Capitol on January 6th. And his thoughts about the election
7 as they progressed between November 3rd and January 6th are
8 showing an increasing amount of intent, and what you will see
9 through these messages is he has various thought processes as
10 to what's going to happen with this election between outright
11 believing it's not real to believing the Supreme Court is
12 going to overturn it, to landing it at, well, Congress has to
13 stop it on January 6th.

14 THE COURT: All right. Mr. Burnham, you want to
15 say anything in response to that?

16 MR. BURNHAM: Yes, your Honor. I think the
17 position we've always maintained is that just general talk
18 about the election, was it stolen, was it not, without some
19 link is not enough to even have the marginal relevance your
20 Honor has been looking for, so I think the court's
21 observations are right on about this one.

22 THE COURT: I'm going to conditionally admit it.
23 I'll have to see what the track of these messages is, and if
24 it fits within a showing that is relevant to intent in this
25 case.

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1 MS. AYERS-PEREZ: Yes, your Honor.

2 THE COURT: So conditionally admit it.

3 THE COURT: Which means I'm permitting the witness
4 to testify with respect to it subject to further decision by
5 me.

6 MS. AYERS-PEREZ: Yes, your Honor.

7 Q Agent Moore, can you tell us what we're looking at
8 here?

9 A We're looking at two posts made by Mr. Brock on
10 November 9th, 2020.

11 Q Okay. And can you read the first post to us.

12 A "When we get to the bottom of this conspiracy, we need
13 to execute the traitors that are trying to steal the
14 election, and that includes the leaders of the media and
15 social media aiding and abetting the coup plotters."

16 Q And the second message, Agent Moore?

17 A "Every day the fraud grows. Every day the Arizona lead
18 shrinks. GOP and RINOs stand with the President now or be
19 lost forever. We will win this."

20 Q What is RINOs?

21 A It's a acronym for Republicans in Name Only.

22 Q All right. I'm going to pull up --

23 THE COURT: Do one more and then we'll probably
24 break for the day.

25 MS. AYERS-PEREZ: Okay, your Honor. I'm going to

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1 pull up what's been marked as Government's Exhibit 903.

2 THE COURT: This is 90 --

3 MS. AYERS-PEREZ: 3.

4 THE COURT: Yes, 903, I'm sorry. Same objection?

5 MR. BURNHAM: Yes, same objection, your Honor.

6 THE COURT: All right. Didn't get blown up much
7 but I think I can read it as long as we move it over so it's
8 not blocked on the right-hand side by these icons.

9 MS. AYERS-PEREZ: Might be easier to do it in two
10 parts, the top half and the bottom half and they're two
11 different things as well.

12 THE COURT: You can do whatever you want, I can
13 read it as is, but this is all right.

14 (The Court reviewing the exhibit.)

15 THE COURT: The references at the bottom are just
16 references to future events?

17 MS. AYERS-PEREZ: They are, your Honor.

18 THE COURT: They're not the date of any
19 communication?

20 MS. AYERS-PEREZ: It's not the date of any
21 communication. I would point out that there's an RSVP that
22 he put that he's attending the Stop the Steal Rally on
23 January 6th in Washington, D.C.

24 THE COURT: Right, but it's just referencing that
25 future event.

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1 MS. AYERS-PEREZ: Correct, it's not a message from
2 him.

3 THE COURT: The only message other than the
4 reference, if you will, to that future event is right at the
5 top in the post -- oh, I guess there's a message to Senator
6 Hawley as well.

7 MS. AYERS-PEREZ: And right above that, it looks
8 like a post 6 January 2021, "Storm the Castle."

9 THE COURT: All right. I understand the same
10 objection, this one is more directly tied to the January 6th
11 by the reference to the future event and on two occasions,
12 the first of which is, includes the label "Storm the Castle,"
13 and indicates an apparent willingness to take action. And I
14 will admit it on that basis, not conditionally, I will admit
15 this one.

16 And with that, we're past 5 p.m., so you're
17 barreling right along in your testimony, I am assuming that
18 you're going to finish the government's case tomorrow
19 morning.

20 MS. AYERS-PEREZ: I -- that is correct, your Honor,
21 Agent Moore is our final witness.

22 THE COURT: So we'll go ahead and break for the
23 day. The defense should obviously be prepared with its case
24 tomorrow because we will reach your case tomorrow unless
25 there's a motion that I rule on that keeps us from reaching

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1 the case, but let's be ready to go at 9:30, and we'll
2 continue with Special Agent Moore at that time. Thank you,
3 sir. Thank you all. Anything further that we need to talk
4 about before we break?

5 MS. AYERS-PEREZ: Nothing from the Government.

6 MR. BURNHAM: No, your Honor.

7 THE COURT: All right. Thank you all, see you
8 then.

9 (Court Adjourned, 5:02 p.m.)
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Dated this 25th day of November, 2022

/S/ JODI L. HIBBARD

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VOLUME II
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
-----x
UNITED STATES OF AMERICA

vs. 21-CR-140

LARRY RENDALL BROCK,

Defendant.

-----x

Transcript of a Bench Trial held on
November 15, 2022, at the E. Barrett Prettyman U.S.
Courthouse, 333 Constitution Avenue, N.W.,
Washington, D.C., the HONORABLE JOHN D. BATES,
Senior Judge, Presiding.

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I N D E X O F T E S T I M O N Y

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Moore, cont'd	224	265	293	--

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1 (Open Court, 9:37 a.m.)

2 THE CLERK: Your Honor, we have criminal action
3 21-140, United States of America versus Larry Brock and all
4 counsel are present.

5 THE COURT: All right, good morning to all counsel
6 and everyone else. And let me ask an initial question.
7 Since things are moving a little faster than perhaps I had
8 anticipated, I will ask you, Mr. Burnham, whether you have
9 informed the Government of your potential witnesses if the
10 defense puts on a case.

11 MR. BURNHAM: Your Honor, the only -- the only
12 witness we might call would be the defendant. I don't
13 believe I have --

14 THE COURT: As long as they're aware of that.

15 MR. BURNHAM: I don't know if I explicitly informed
16 them of that, we didn't submit a witness list but that was
17 the implication I think from that.

18 THE COURT: All right. With that, are we ready to
19 resume with Special Agent Moore?

20 MS. AYERS-PEREZ: Yes, your Honor.

21 THE COURT: All right. Special Agent Moore,
22 please. All right. I remind you you're still under oath.

23 THE WITNESS: Yes, sir.

24

25 J O H N M O O R E , called as a witness

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1 and being previously duly sworn, testifies as
2 follows:

3 THE COURT: Let's continue, Ms. Ayers-Perez.

4 MS. AYERS-PEREZ: Thank you, your Honor.

5 CONTINUED DIRECT EXAMINATION BY MS. AYERS-PEREZ:

6 Q Good morning, Agent Moore.

7 A Good morning, ma'am.

8 Q I show we left off on Exhibit 903 last time. So we can
9 pull up Government's Exhibit 904.

10 THE COURT: Is there an objection?

11 MR. BURNHAM: Yes, your Honor, the same basic
12 objection. It refers to the Insurrection Act, Supreme Court,
13 to patriots from Athens, doesn't refer to January 6th,
14 Electoral College, certification, anything like that.

15 THE COURT: All right. And it's a communication
16 from November -- I'm sorry, December 4th. Anything you want
17 to say, Ms. Ayers-Perez?

18 MS. AYERS-PEREZ: A couple things, your Honor.
19 First, this is the first mention of IO war and if you
20 remember from Government's Exhibit 509, the defendant uses
21 the term IO war multiple times while he's on the Senate floor
22 on January 6th. This is again about the election, the
23 Supreme Court stopping the steal, he attends the Stop the
24 Steal Rally on January 6th, and the "steal" of course is in
25 reference to the election from November which is the basis of

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1 the January 6th Capitol riot that the defendant was at, and
2 in further messages, you'll see more communication about
3 insurrection, and this is the first time we see mention of
4 the Insurrection Act so I do think this is relevant. I do
5 not think it's more prejudicial than probative in this
6 instance, your Honor.

7 THE COURT: All right. I think it is, in context
8 and the context being other Facebook messages, it is relevant
9 as being more -- making a fact in issue, the intent question,
10 addressing that and making it more probable than not that the
11 intent that the Government asserts was present with
12 Mr. Brock, and then when we get to a -- and therefore it's
13 admissible. And then when we get to Rule 403 -- admissible
14 under 401 and 402. When we get to Rule 403, again, in
15 context, I think the relevance is more than minimal, and the
16 prejudice, I understand the argument for prejudice. It
17 doesn't seem to me that once the other Facebook
18 communications that I've admitted are in evidence that the
19 prejudice from this document is very significant and I find
20 that it, prejudice does not substantially outweigh the
21 relevance here, and that's especially true with a bench trial
22 and the ability of the judge to filter and limit any
23 potential prejudice. So the objection is overruled and 904
24 is admitted.

25 Q Agent Moore, can you tell us what we're looking at here

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1 with Government's 904?

2 A Yes. This is a Facebook -- excuse me, a reply on
3 Facebook to a post made by somebody named Jeff Ciaccio and
4 the reply was made on December 4th, 2020.

5 Q And can you read to us what the reply was?

6 A "No dude, you will not win the IO war, nor will I cede
7 that territory to you. I have been trying to refrain but if
8 you are too stupid to see the fraud even with video evidence
9 you are not smart enough to truly understand the oath. I
10 will reveal no more. It is pointless. Either SCOTUS stops
11 the steal or we must emulate the patriots from Athens in
12 1946. Plans need to be made. The Insurrection Act must be
13 used and those like you that swore to a higher oath will be
14 held accountable to a higher standard."

15 Q And do you believe this post to be made by Mr. Brock?

16 A I do.

17 Q And why is that?

18 A Because it comes from his Torch Flyer Facebook account.

19 Q You mentioned yesterday, Agent Moore, that you have a
20 military background?

21 A That's correct.

22 Q Do you know what IO war means?

23 A It means information operations.

24 Q What is information operations?

25 A Information operations is a broad term in concept,

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1 referring to the use of information to shape the battlefield
2 both using information to shape what enemy conventional
3 military units do as well as unconventional enemy forces as
4 well as the civilian populous where, in this case, the United
5 States would be fighting using a multitude of things from
6 information, shaping the news media, doing events that are
7 deemed to be friendly to the local populous, doing a
8 multitude of things to shape the information that your enemy
9 or the civilians take in with the intent of ultimately
10 influencing their actions.

11 MR. BURNHAM: Your Honor, I have a partial
12 objection to that answer. I don't think it was a bad
13 question, just ask what's the definition, but then -- because
14 he is a veteran, I acknowledge that, but then about the
15 remaining 75 percent of it I think got into speculation at
16 least as it applies to how it's used in this context, so I
17 move to strike everything after the basic definition of what
18 IO means.

19 THE COURT: I'm going to limit what the testimony
20 was just by not considering part of it. Also verged on being
21 expert testimony and of course Special Agent Moore has not
22 been qualified as an expert, but I will accept the general
23 contours of the explanation of what IO war is.

24 Q Agent Moore, what is SCOTUS, if you know?

25 A It's an acronym for Supreme Court of the United States.

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1 Q Okay. And are you familiar with what patriots from
2 Athens in 1946 means, just a general idea?

3 A I am.

4 Q And can you tell us what that is?

5 A It was when a group of World War II veterans broke into
6 a National Guard armory in Athens, Tennessee, took weapons
7 and used them to fire on election authorities to seize ballot
8 boxes in what was perceived as an illegitimate election.

9 Q If we can pull up Government's Exhibit 905.

10 THE COURT: This is the same one, isn't it?

11 MS. AYERS-PEREZ: Yes, this is. There we go.

12 MR. BURNHAM: Your Honor, same basic objection,
13 again, as I've been objecting to messages that don't refer to
14 anything surrounding the certification of the votes and, you
15 know, the prejudice here would be particularly if the
16 Government argues that it should be taken literally, you
17 know, the prejudice of them arguing this shows he was trying
18 to start a civil war. To the extent that they are going to
19 take that position would be significant prejudice.

20 THE COURT: All right. I understand that, but of
21 course I can accept or reject the Government's argument if it
22 does choose to argue that. Same ruling in essence,
23 particularly in context, particularly because the standard,
24 once we reach 403, the standard is whether in this instance,
25 the unfair prejudice, which is the term in Rule 403,

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1 substantially outweighs the probative value, and I find that
2 it does not.

3 MS. AYERS-PEREZ: Yes, your Honor.

4 THE COURT: Therefore, 905 is admitted.

5 MS. AYERS-PEREZ: Thank you.

6 Q Agent Moore, what are we looking at here in
7 Government's 905?

8 A Post made by Mr. Brock on Facebook from December 4th,
9 2020.

10 Q Okay. And are there a number of posts in this exhibit?

11 A There are.

12 Q Are they all from December 4, 2020?

13 A Sorry, the first two are from December 4th and the last
14 three are from December 5th.

15 Q Will you read these posts to us?

16 A The first one says, "Trump won the election. If
17 necessary I aim to misbehave."

18 Q The second one?

19 A "Prove me wrong. The FBI is the equivalent of the KGB
20 for the Democratic party."

21 Q Those are both from December 4th?

22 A "Game is high drama. I mean I am not sure if we can
23 break 100."

24 Q And those first two posts, those were from
25 December 4th?

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1 A That's correct.

2 Q And what are the dates, what's the date of the last
3 three posts?

4 A December 5th, 2020.

5 Q Okay. And if you could start with the fourth one.

6 A The fourth one is, "#resist Government overreach must
7 be stopped in even red state Texas. Tell them to eat a bag."

8 Q And the last one?

9 A "If SCOTUS doesn't act we have two choices. We can
10 either live in a Communist country or we can rebel, keep the
11 rightful President in power and demand free and fair
12 elections #civilwar2021."

13 Q I'm pulling up Government's 906.

14 THE COURT: Same objection?

15 MR. BURNHAM: Same objection. I would just add
16 that this one is even a much more, much higher level of
17 generality than even some of the ones your Honor has admitted
18 in the series.

19 THE COURT: I make the same ruling, make the same
20 observation that certainly in my consideration of this
21 evidence, I will consider its level of generality and how
22 specifically it is tied to January 6th, but in the context of
23 the Facebook messages and the question of intent, I find that
24 it's both relevant and not inadmissible under Rule 403.

25 Q Agent Moore, what are we looking at here in

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1 Government's 906?

2 A This is a post made by Mr. Brock on Facebook on
3 December 6, 2020.

4 Q Okay. And can you tell us what it says?

5 A "Going to get a lot scarier if SCOTUS doesn't act. No
6 way in hell we should accept this rigged election. We need
7 to restore the Constitution and the best and shortest way is
8 to go offensive on the Communists that stole it, aka the
9 Democratic party."

10 Q All right. I'm pulling up what is labeled as
11 Government's Exhibit 907. And just as way of context for
12 your Honor, this one is a conversation between Mr. Brock and
13 another individual, and it takes the entire length of the
14 page. If it's easier we can highlight the top half and then
15 go to the bottom half.

16 THE COURT: We're having trouble finding it. You
17 can scroll. Scroll again, please. Is there more on the next
18 page?

19 MS. AYERS-PEREZ: This is the only page.

20 THE COURT: And any objection?

21 MR. BURNHAM: Same basic objection.

22 THE COURT: Same ruling. Understanding, of course,
23 that it's what comes from Torch Flyer that I'm looking at in
24 terms of the relevance to this case, and while initially some
25 of the communications from Torch Flyer were pretty mundane

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1 and probably irrelevant, ultimately, the context of the whole
2 series of communications with some specific references later
3 in them, I find that the relevance under 401 and 402 is
4 satisfied and the outcome of the 403 assessment is the same,
5 that any unfair prejudice is not -- does not substantially
6 outweigh the probative value. And therefore, 907 is
7 admitted.

8 Q Agent Moore, what are we looking at here in
9 Government's 907?

10 A It's a direct message conversation between Mr. Brock
11 and someone whose Facebook screen name is Beaf Supreame.

12 Q Do you happen to know who Beaf Supreame is outside of
13 social media?

14 A I do.

15 Q Okay. Without going into anything he's ever said to
16 you, do you know what his occupation was?

17 A He had worked at the same company as Mr. Brock,
18 Hillwood Airways.

19 Q Did he have any military background?

20 A He did.

21 Q And what was that?

22 A I believe he was a Special Forces NCO in the Army and
23 then became a aviator, Army aviator as a warrant officer and
24 retired.

25 Q Okay. So what are we looking at here in 907?

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1 A The conversation between the two of them on Facebook.

2 Q And what date did it occur?

3 A December 7th, 2020.

4 Q And if you could read that conversation for us.

5 A The first message, Beaf Supreame says, "Need to
6 establish a network prior to anything. Need event driven IO
7 wins to garner support. Need hierarchy of command for
8 operational cells and auxiliary support. Need psyops,
9 leaflets, et cetera. Then organize civil disturbance without
10 our involvement. Lots of planning and organizing."

11 Q Agent Moore, what is psyops, if you know?

12 A Psychological operations.

13 Q Okay. If you could continue.

14 A To that Mr. Brock responds, "If not you then who?"

15 Q Keep going.

16 A And to that Beaf Supreame responds, "Well I'm currently
17 getting my shit mixed at work. I have very little support
18 from others in the office and just got more thrown on me."

19 Q You can continue, Mr. Moore -- Agent Moore.

20 A To that Mr. Brock replies, "Roger." Then goes on to
21 say, "You know people that should be doing this."

22 To that, Beaf Supreame replies, "But I am
23 playing this by ear and have a lot of people that are like
24 minded."

25 To that Mr. Brock replies, "Same."

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1 To that, Beaf Supreame says, "Never want to be
2 the guy that runs over the protester or blasts a bunch of
3 people in self-defense after putting out a dumpster fire. It
4 will take an event like someone getting schwacked on a gun
5 grab raid ... then all hell breaks loose."

6 To that Mr. Brock responded, "Probably but I
7 think we could also peacefully occupy legislatures in these
8 fake states and demand action." He goes on to post, "I think
9 SCOTUS needs to see if they don't act that there will be
10 blood."

11 Q And Agent, I apologize, Agent Moore, you say "he goes
12 on to post," is that Mr. Brock?

13 A Yes, two consecutive posts.

14 Q Thank you. Please continue with the last one.

15 A Finally, Beaf Supreame responds, "I'm pretty sure that
16 I cannot get time off to go to another state. Gonna keep
17 working until it is at the point when it is time to defend."

18 Q Thank you. I'm pulling up what's been marked as
19 Government Exhibit 908.

20 THE COURT: All right.

21 MS. AYERS-PEREZ: And there's some more at the
22 bottom of the page, if you can scroll down, please.

23 MR. BURNHAM: Your Honor.

24 THE COURT: Mr. Burnham.

25 MR. BURNHAM: Same objection. We're confident your

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1 Honor can sort this out, but as a purely legal matter,
2 there's not much relevance here. It appears to be a lengthy
3 quote and there's references to AR-15s and a master target
4 list and, you know, scary-sounding things that have no
5 connection to the rest of the evidence, so I think it should
6 be excluded on 403 grounds.

7 MS. AYERS-PEREZ: Your Honor, I believe when we
8 look at the first message --

9 THE COURT: Just scroll back to the first message.

10 MS. AYERS-PEREZ: Yes. This is just a continuation
11 of what we've seen in the Government exhibits in the 900
12 series that have come before this, that the defendant is very
13 concerned about the Supreme Court when it comes to the
14 election, that's the basis of the January 6th riots that he
15 took part in. He's talking about restoring the republic
16 through force of arms and once again talking about the same
17 election that's the basis of the counting of these Electoral
18 College votes. Then if we scroll to the bottom, at this
19 point it appears Mr. Brock is aware the Supreme Court is not
20 going to do what he's hoping they're going to do when it
21 comes to the election results and now he's talking about
22 rules of engagement, clear chain of command which is going to
23 be emulated in other exhibits that we see after this,
24 including one that your Honor's already seen as part of the
25 opening statement. But this is all in the context and the

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1 lead up to January 6th and the defendant's continued concern
2 about the election, belief that the election was stolen and
3 the basis of why he's there on January 6th and the intent to
4 stop counting of the Electoral College votes on January 6th,
5 which is the basis of the intent for Count One of the
6 indictment.

7 THE COURT: All right. Same ruling. Certainly the
8 long quote from speeches by others is not directly of great
9 relevance but the context of the entire chain of
10 communications is consistent with the other Facebook
11 communications that have been admitted into evidence and does
12 bear certainly a relationship to the question of intent and
13 therefore I find it is relevant. And again, in a bench trial
14 in particular, I find that the Rule 403 analysis leads to the
15 exhibit being admitted and I will admit it. So that's 908
16 that is admitted.

17 Q All right, Agent Moore, what are we looking at here?

18 A Post made by Mr. Brock on December 11th, 2020.

19 Q Is it multiple posts or just one?

20 A Yes, sorry, multiple posts.

21 Q Okay. And if you could read for us.

22 A The first says, "If SCOTUS doesn't act, Trump must
23 emulate Lincoln and we must restore the republic through
24 force of arms." Second post says --

25 THE COURT: Do we need to read the whole of the

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1 second post?

2 MS. AYERS-PEREZ: We don't. Your Honor, if you're
3 okay with that, if we could just read the last sentence of
4 the first --

5 THE COURT: Maybe the first sentence and the last
6 sentence.

7 A The first sentence is, "True in 1776 and true today if
8 SCOTUS doesn't act." And the last sentence says, "But when a
9 long train of abuses and usurpations, pursuing invariably the
10 same object evinces a design to reduce them under absolute
11 despotism, it is their right, it is their duty, to throw off
12 such government, and to provide new guards for their future
13 security."

14 Q Okay, Agent Moore. If you go on to the last two posts.

15 A Okay. The next post says, "It appears as if SCOTUS is
16 going to duck. If so then it will be game on soon. We need
17 ROE, a clear chain of command ending with President Trump and
18 a master target list."

19 Q Agent Moore, do you know what ROE stands for?

20 A Rules of engagement.

21 Q Continue with the last post, please.

22 A "It is a good weekend to make sure your AR-15s are
23 sighted. Your clips are loaded. Your body armor checked."

24 Q Agent Moore, what is an AR-15 if you know?

25 A It is a semiautomatic rifle.

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1 Q Going to pull up what's been marked as
2 Government's 909.

3 (The Court reviewing the exhibit.)

4 THE COURT: Scroll, please. All right. That's it?

5 MS. AYERS-PEREZ: It's four pages long, your Honor.

6 THE COURT: Oh. All right. Keep scrolling.

7 Scroll again, please.

8 And again. Woops, I'm sorry. Well, yeah, stop.

9 Okay.

10 Scroll, please.

11 And again.

12 And again.

13 And that's it?

14 MS. AYERS-PEREZ: That is it.

15 THE COURT: Thank you.

16 MR. BURNHAM: Your Honor, we're getting close to
17 the part I believe is relevant but I'm going to continue
18 objecting for a couple more. Now it's in evidence that this
19 is a military buddy, this post in particular is sort of out
20 there theorizing, so same objection.

21 THE COURT: All right. You know, some of this has
22 marginal relevance, but I don't think in the context of the
23 entire set of Facebook communications the prejudice,
24 particularly with me, is all that great, and indeed I don't
25 think it outweighs the probative value of this set of

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1 communications in the context of the other communications,
2 and it's really just setting out a full context. This one's
3 probably a little closer, but I will go ahead and admit it,
4 and under both the 401, 402 analysis, and a 403 prejudice
5 analysis.

6 Q All right, Agent Moore, what are we looking at here in
7 Government's Exhibit 909?

8 A This is another Facebook direct message conversation
9 between Mr. Brock and the friend Beaf Supreame that we
10 referenced earlier.

11 Q And when does this conversation take place?

12 A December 18th, 2020.

13 Q Okay. If you could read what Mr. Brock says, please.

14 A First post says, "If Biden steals it, I do not
15 recognize the USG as being legitimate."

16 Q Do you know what the USG stands for?

17 A United States Government.

18 Q If you could continue, please.

19 A "I want to actively rebel."

20 Q What does Beaf Supreame say?

21 A "I think there is so much swilling right now with
22 commie china ties and hunter business deals ... all the MSM
23 networks are suppressing the story. There will be some
24 blowback coming, timed with a coming sham inauguration that
25 may be the IO victory that we can leverage."

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1 Q Do you know what MSM stands for?

2 A Mainstream media.

3 Q You can continue, please.

4 A Beaf Supreame goes on to say, "Do you have body armor
5 or plate carrier?" To this Mr. Brock replies, "Yep."

6 Q What does Mr. Brock do at that point?

7 A He sends a photo to Beaf Supreame.

8 Q And what is this photo of?

9 A A plate carrier.

10 Q Does that look familiar to you in any of the evidence
11 you've seen so far?

12 A It does, looks like the plate carrier Mr. Brock was
13 wearing on January 6th, 2021.

14 Q And by plate carrier, does it look like a vest
15 basically?

16 A Yes, body armor or vest.

17 Q We can continue. All right, Agent Moore, what happens
18 from here?

19 A Mr. Brock posts, "Gets here 28 December."

20 Q From there?

21 A Beaf Supreame responds, "Nice. I am trying to get some
22 new plates from a buddy." Beaf Supreame goes on to post,
23 "Mine are moldy and delaminating." To this, Mr. Brock
24 replies, "Can you imagine if several hundred thousand
25 patriots descended on D.C. refusing to let Biden be

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1 inaugurated." And he goes on to say, "I do not believe the
2 U.S. military will fire on us."

3 To that, Beaf Supreame posts, "Yeah.
4 Inauguration would be canceled or moved to a secure
5 location." Beaf Supreame goes on to post, "But would be more
6 of a spectacle to delay." And again posts, Beaf Supreame
7 again posts, "And a possible IO loss if a cop got hurt."

8 To that Mr. Brock responded, "Look dude I am
9 pretty sure I am ready to go at it. I just need numbers with
10 me."

11 Q And from there?

12 A Beaf Supreame responds, "It would be branded as a right
13 wing militia extremist organization that hates LEO."

14 Q From there?

15 A Mr. Brock responds, "Yep but we will be branded that
16 way regardless."

17 Q Keep going.

18 A Beaf Supreame responds, "Disagree, the left are doing a
19 great job of branding themselves." Beaf Supreame goes on to
20 post --

21 Q Agent Moore, sorry to cut you off there, but I think
22 that message has one final word there at the top of the next
23 page.

24 A Yes, I left out a word. So Beaf Supreame's last post
25 said, "Disagree, the left are doing a great job of branding

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1 themselves extremists."

2 Q Okay. Go on from there, please.

3 A Beaf Supreame goes on to post, "We need to be rational,
4 organized, strength to back the defense of the Constitution.
5 Can't blow the load early or we are just a bunch of Proud
6 Boys, et cetera."

7 Q And Agent Moore, are you familiar with the term Proud
8 Boys?

9 A I am.

10 Q And what is that?

11 A They are a -- consider themselves to be western
12 chauvinists, I don't want to tie that to any sort of ideology
13 but they're western chauvinists, organization that is often
14 protesting and threatening to use violence against people
15 that they oppose.

16 Q If you can continue from there.

17 A To that, Beaf Supreame goes on to post, "I'm don't
18 agree with armed protesting, nothing good comes from it.
19 Just bad press. I haven't seen a line in the sand where I
20 quit my job and go to war."

21 To that Mr. Brock responds, "Dude, if theft of
22 the Presidency isn't enough, why do you think gun
23 confiscation will be?"

24 To that Beaf Supreame says, "Okay, so load up
25 our trucks and go to D.C. and hope we don't get arrested?"

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1 Mr. Brock responds, "Nope. We need a plan. I
2 am hoping Trump provides it."

3 To that, Beaf Supreame says, "the Presidency
4 was stolen. It's time for damage control starting in
5 Georgia. The ATF signaled their softball answer to Biden's
6 call. I am waiting for the situation to develop. A lot of
7 people are waiting for that as well."

8 Q Agent Moore, this is just to make sure the record is
9 clear, in that last post you just read, is it Georgia or did
10 it say GA?

11 A GA.

12 Q Do you know that to stand for Georgia?

13 A I do.

14 Q Okay. If you could continue, please.

15 A So to that post, Mr. Brock responds, "You know how to
16 boil a frog?"

17 And to that, Beaf Supreame posts, "Well a frog
18 is just a dumb amphibian without the ability to adapt to its
19 situation. It acts only with animal instincts and can be
20 controlled because those instincts are predictable and basic.
21 The mistake can be made by someone that reaches for the frog
22 and is met by a predator that may look like a frog to the
23 boiler."

24 To that Mr. Brock responds, "LOL." And
25 Mr. Brock goes on to post, "Drew, I don't believe Americans

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1 will act."

2 Q Do you know who Drew is?

3 A Yes, Drew is the first name of the person with the Beaf
4 Supreame Facebook name.

5 Q Okay. And then the last message?

6 A Beaf Supreame responds, "I disagree. I've seen
7 firsthand what 12 guys can do to recruit, train, equip and
8 advise lesser motivated people."

9 Q All right. I'm going to pull up what's been marked as
10 Government's Exhibit 910.

11 Your Honor, this begins with what you're
12 familiar with from opening statement; however it is actually
13 three pages long.

14 THE COURT: Did I admit the document when we
15 discussed it or just indicated an inclination to admit it?

16 MS. AYERS-PEREZ: You did not actually admit it,
17 you just said that you wanted to see where the evidence takes
18 us because you don't know if it's relevant until you heard
19 the rest of the evidence.

20 THE COURT: All right. Well, let me read it over.

21 (The Court reviewing the exhibit.)

22 THE COURT: Scroll again, please.

23 And again.

24 And again. Is that it?

25 MS. AYERS-PEREZ: That is it, your Honor.

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1 THE COURT: Thank you.

2 MR. BURNHAM: Same objection, your Honor. Now with
3 the benefit of all the evidence, our position would be that
4 the yawning gap between the content here and the actual rest
5 of the case evidence is starting to get absurd. We're
6 talking about setting up provisional governments and, you
7 know, all sorts of stuff, so same objection on those grounds.

8 THE COURT: All right. Go to the top of the
9 document, please. Scroll back. So in context, I think this,
10 continue to think that this exhibit is admissible. With
11 respect to relevance, it specifically outlines a, to quote
12 it, "plan of action if Congress fails to act on 6 January,"
13 and then among the list of main tasks are seizure or, is
14 seizure of certain members of Congress. So it seems to me
15 that this does have some real connection to what is being
16 charged with respect to Mr. Brock and therefore I find that
17 the test of relevance has been met, it is relevant and
18 therefore admissible.

19 With respect to prejudice, standing alone, maybe
20 I'd think that there was some prejudice but put in the
21 context of all the other documents that have been admitted,
22 it seems to me that the prejudice here is not significant and
23 not unfair, and does not substantially outweigh the probative
24 value or relevance of the document and therefore 910 is
25 admitted.

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1 Q Agent Moore, what are we looking at here with
2 Government's Exhibit 910?

3 A This is a continuation of the conversation between
4 Mr. Brock and Beaf Supreame.

5 Q What is the date of this conversation?

6 A December 24th, 2020.

7 Q Okay. And who starts the conversation?

8 A Mr. Brock.

9 Q Can you tell us what Mr. Brock says?

10 A "Initial thoughts if we could do it. Assumptions:
11 U.S. military isn't involved. Objective: Restore the rule
12 of law in the rebellious states, hold a free and fair
13 election in one year. Plan of action if Congress fails to
14 act on 6 January."

15 Q And just for the record, that was -- it says Jan,
16 right?

17 A That's correct, it says 6 Jan.

18 Q And do you know that to be a short form of the word
19 January?

20 A Yes, ma'am.

21 Q If you could continue, please.

22 A "Main tasks. 1. Seize all Democratic politicians and
23 Biden key staff and select Republicans (Thune and McConnell).
24 Begin interrogations using measures we used on Al Qaeda to
25 gain evidence on the coup.

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1 "Number 2. Have General Flynn get in touch
2 with President Trump and have him declare a state of
3 Insurrection exists to provide color of law to our actions.

4 "3. Seize national media assets and key
5 personnel. Zuck, Jack, CNN lead and talking heads, seize
6 WAPO, seize NYT editors. Eliminate them. Media silence
7 except for White House communications."

8 Q Agent Moore, do you know who Zuck is?

9 A I believe it's a reference to former Twitter CEO -- or
10 correction, Zuck is a reference to Mark Zuckerberg, the
11 current founder and CEO of Facebook.

12 Q And Jack?

13 A Jack I believe is a reference to former Twitter CEO
14 Jack Dorsey.

15 Q And WAPO, do you know what that stands for?

16 A The *Washington Post*.

17 Q Do you know what NYT stands for?

18 A *New York Times*.

19 Q If you can continue, Agent Moore, please.

20 THE COURT: Interesting observation that now in
21 your view, CNN doesn't require explanation but the print
22 media, *Washington Post* and *New York Times* do.

23 MS. AYERS-PEREZ: That's true.

24 THE COURT: Maybe a comment on our society.

25 Q Agent Moore, do you know what CNN stands for?

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1 A The Cable News Network.

2 Q There we go, thank you. If we can continue.

3 A "Number 4. Present slate for clean elections to
4 existing Congress and make sure they sign.

5 "Number 5. Let the Democratic cities burn.
6 Cut off power and food to all who oppose us.

7 "Number 6. Establish provisional government
8 in rebellious states and representatives we can count on.

9 "Number 7. Seize all foreign aid except for
10 key allies as determined by Trump.

11 "Number 8. General pardon for all crimes up
12 to and including murder of those restoring the Constitution
13 and putting down the Democratic Insurrection.

14 "ROE."

15 Q What does that stand for again, Agent Moore?

16 A Rules of engagement.

17 Q If you can continue, please.

18 A "1, do not kill LEO unless necessary. Gas would assist
19 in this if we can get it."

20 Q Agent Moore, do you know what LEO stands for?

21 A Law enforcement officer.

22 Q If you can continue, please.

23 A "2. Attempt to capture Democrats with knowledge of
24 coup.

25 "3. Shoot and destroy enemy communication

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1 nodes and key personnel.

2 "4. So many subtasks I can't even imagine
3 them."

4 Q And what's the response to this, Agent Moore?

5 A To this Beaf Supreame responds, "So what's the
6 paragraph III meat and potatoes? Concept of the operations,
7 tasks to subordinate units, coordinating instructions and
8 actions on the objective."

9 Q And that's just a shortened version of the word
10 objective?

11 A That's correct.

12 Q Okay. And what else does he say?

13 A He goes on to say, "Who is providing secure comms, who
14 is in command, what is the order of battle with tasks and
15 purpose of maneuver units? Locations of command elements and
16 next higher, and paragraph V stuff, who is providing funding,
17 medical care and facilities, weapons, ammo, demo, equipment,
18 meals, billeting, DETFACs, et cetera?"

19 Q What does comms mean, Agent Moore?

20 A Communications.

21 Q And what is DETFACs?

22 A I believe it's a -- not an acronym but shorter version
23 of detention facilities.

24 Q Okay. And what happens from there?

25 A Beaf Supreame goes on to say, "And going back to

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1 mission prep and IPB, what is the enemy situation, COO/MCOO,
2 comp, disp capabilities, air, fires, known and assessed
3 locations for targeting, MLCOA/MDCOA."

4 Q All right, there's a lot in this one, Agent Moore.
5 What does IPB stand for?

6 A Information preparation of the battlefield.

7 Q Do you know what COO/MCOO stands for?

8 A MCOO is modified combined obstacle overlay and I
9 believe which is basically a piece of acetate you put over a
10 map when you're planning a military operation to depict
11 certain obstacles. I believe COO is a similar thing but I in
12 the Army have not seen COO.

13 Q What about MLCOA?

14 A Most likely course of action.

15 Q MDCOA?

16 A Most dangerous course of action.

17 Q And going up a little, do you know what comp is short
18 for?

19 A Composition.

20 Q And Disp?

21 A Disposition.

22 Q Okay. If you can continue from there.

23 A To that, Mr. Brock responds, "Totally agree and it all
24 starts with a chain of command."

25 Q And from there?

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1 A Goes on to say, "It needs to stretch to Trump ideally."

2 Q Was that Mr. Brock who says that?

3 A Yes.

4 Q Okay. And what happens from there?

5 A Beaf Supreame replies, "So unified command at strategic
6 level is not entirely necessary. But field commanders and
7 order of battle for maneuver elements jas," I think he means
8 has, "to be defined."

9 Q Okay.

10 A To that Mr. Brock responds, "No question." And then
11 goes on to respond again, "Surely someone has planned for
12 this with experience." Goes on to post again. "This isn't
13 what I was trained to plan."

14 And Beaf Supreame says, "This is like an
15 invasion versus UW, punching and running in support of larger
16 operations. So in occupied, nonpermissive/semipermissive
17 battle space, the UW operation is supported by an area
18 command, with subordinate overt and covert elements. We
19 called them the auxiliary, logistical support network and
20 guerrilla force. I am trained to act as a Co-BN," which I
21 believe means company or battalion, "commander for indigenous
22 forces if necessary, lead small teams or train larger
23 elements, usually brigade staff to plan for and carry out
24 operation."

25 Q What does UW stand for, if you know?

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1 A Unconventional warfare.

2 Q What does nonpermissive/semi-permissive battle space
3 mean, if you know?

4 A Refers to level of threat that exists in the battle
5 space.

6 Q Okay. And then you said Co/BN stood for battalion?

7 A CO stands for company which is military formation and
8 then BN stands for battalion which is the larger parent
9 military formation.

10 Q And what did you say BDE stands for?

11 A Brigade which is the even larger parent military
12 formation to a battalion.

13 Q Understood. If you could continue, please, Agent
14 Moore.

15 A Beaf Supreame goes on to say, "The root SF, UW/FID
16 mission still has the backing of the U.S. military, so not
17 necessarily a unilateral op."

18 Q What does SF stand for?

19 A Special forces.

20 Q What does UW/FID stand for?

21 A UW stands for unconventional warfare, FID stands for
22 foreign internal defense.

23 Q Okay, if you could continue, please.

24 A Mr. Brock responds, "Yes, but you know people trained
25 to do larger stuff. My prediction is occupation of Capitol

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1 abs capture of some assets is easy. If Trump didn't back the
2 peaceful protest of veterans to restore the republic, we
3 lose." Mr. Brock goes on to say, "I think we would covertly.
4 They have to have cover and denial."

5 Q And from there?

6 A Mr. Brock says, "Okay, hopping in the shower. Think
7 more."

8 To that Beaf Supreame responds, "Okay. First
9 thing to figure out is who is the source for op funds."

10 To that Mr. Brock responds, "Makes you wonder
11 how our revolution got off the ground." Mr. Brock goes on to
12 say, "We need someone with \$\$\$\$ to back it."

13 Q And lastly?

14 A To that Beaf Supreame responds, "Revolution had funding
15 from France and seized property. But for every conventional
16 in ranks battle there were 10 guerilla style operations like
17 the most famous Christmas Day raid. The Brits never had a
18 chance. That is why we spend billions every year to sustain
19 combat operations in AFG against the sand people."

20 Q What do you -- or do you know what AFG stands for?

21 A I believe it's short for Afghanistan.

22 Q If we can go up to the top of page 2, I'm going to
23 bring you back to one that we had talked about a little bit
24 earlier, where Beaf Supreame says, "So what's the paragraph
25 III meat and potatoes," do you know what paragraph III is in

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1 reference to?

2 A I do. It's the execution paragraph of a military
3 operations order.

4 Q Okay. And below that it says, "and paragraph V stuff,"
5 do you know what that is in reference to?

6 A That's the command and signal paragraph of a military
7 operations order.

8 Q Thank you. I'm going to pull up what's been marked as
9 Government's Exhibit 911.

10 MR. BURNHAM: Happy to say, we have no objection to
11 this one.

12 THE COURT: Thank you, Mr. Burnham. Without
13 objection, 911 may be admitted.

14 Q All right, Agent Moore, what are we looking at here?

15 A This is a Facebook conversation between Mr. Brock and
16 someone with the user name Bettina Steinhold.

17 Q And when is this from?

18 A December 26, 2020.

19 Q Who is writing the first message?

20 A The first one is from Bettina Steinhold.

21 Q And can you read that for us?

22 A "I'm not thinking that. At all. I just believe that a
23 Civil War is the last resource, and no one should wish for
24 it. I'm sure there are more civilized ways to fight."

25 Q And the response?

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1 A Mr. Brock responds, "Agree. Congress can stop it on
2 the 6th of January."

3 Q And from there?

4 A Goes on to say, "The Supreme Court is staying out of
5 it." And again posts, "Those are the last two peaceful
6 options."

7 Q So those last three posts starting with the, "Agree.
8 Congress can stop it on the 6th of January," ending with,
9 "The last two peaceful options," those came from Mr. Brock?

10 A That's correct.

11 Q If you could continue from there?

12 A Bettina Steinhold posts, "Okay."

13 THE COURT: Are we on another date now?

14 Q Yes, Agent Moore, are we on a new date now?

15 A Yes, ma'am, this is December 27th, 2020.

16 Q And what's the response to that?

17 A Mr. Brock responds, "I don't want it to be this way but
18 communism isn't coming to Texas."

19 Q I'm going to pull up what's been marked as Government's
20 Exhibit 912.

21 MR. BURNHAM: No objection to this one either.

22 THE COURT: Without objection, 912 is admitted.

23 Q All right, Agent Moore, what are we looking at here?

24 A This is a continuation of the Facebook conversation
25 between Mr. Brock and Beaf Supreame.

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1 Q Okay. And if you could start with that second message
2 and tell us who it is from.

3 A That's from Mr. Brock.

4 Q And what is the date of these messages?

5 A December 27th, 2020.

6 Q Could you read that message, please?

7 A "I don't think they will do it when the Dems come for
8 the guns."

9 Q Is that, "I don't even think they will do it"?

10 A "I don't even think they will do it when the Dems come
11 for the guns."

12 Q That's from Mr. Brock?

13 A That's correct.

14 Q If you could continue from there, please, Agent Moore?

15 A Beaf Supreame responds, "Hope not. Riots are for
16 chimps."

17 Q Keep going, Agent Moore, please.

18 A Mr. Brock responds, "I prefer outright Insurrection at
19 this point." Mr. Brock goes on to say, "Booked the hotel.
20 Now need to book flights."

21 Beaf Supreame responds, "Where?" And
22 Mr. Brock responds, "D.C. on the 5th through the 7th." Then
23 Mr. Brock goes on to say, "I have a feeling history will turn
24 there." And Mr. Brock posts again, "Not sure how."
25 Mr. Brock goes on to post, "Hopefully Congress doing what is

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1 right." Mr. Brock goes on to post, "Or could be a clown show
2 and an IO loss or an outright rebellion." Mr. Brock goes on
3 to post, "Not knowing how it will go."

4 Q Is that not knowing or no knowing how it will go?

5 A Sorry, "No knowing how it will go."

6 Q What happens from there?

7 A Beaf Supreame posts, "Probably not the best way to go
8 into something. And I seriously doubt it would pay off if
9 you get wrapped up in a riot." Beaf Supreame goes on to
10 post, "There won't be a revolution in D.C. There may be some
11 people getting rolled up. Let the situation develop."

12 Q Okay. I'm going to pull up what's been marked as
13 Government's Exhibit 913.

14 THE COURT: Mr. Burnham?

15 MR. BURNHAM: No objection.

16 THE COURT: Without objection, 913 is admitted.

17 Q All right, Agent Moore, what are we looking at here?

18 A This is a series of Facebook posts by Mr. Brock.

19 Q And what is the date of these?

20 A December 28th, 2020.

21 Q Well, for the first two, what about the last two?

22 A The last -- sorry, the third post is from
23 December 29th, 2020 and the last one is from December 31st,
24 2020.

25 Q Okay. And can you read these for us?

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1 THE COURT: Could you tell me how you know these
2 are from Mr. Brock?

3 THE WITNESS: I would need you to scroll up. I
4 reviewed the Facebook search warrant return with the
5 redactions here, I can't speak intelligently to what is above
6 these postings.

7 MS. AYERS-PEREZ: I'm not the witness, your Honor,
8 but I can answer as to what the record looks like. There are
9 portions of it where it speaks or you have Torch Flyer and
10 then you have a series of posts or messages. They don't
11 always have his name there but they are under there and you
12 have the date and the time and what the message is. And this
13 would be some of those that are within that.

14 THE COURT: All right. I will allow the Government
15 to provide me something that establishes that it's from
16 Mr. Brock, unless Mr. Burnham has no objection to -- or
17 stipulate basically to the fact that these are messages from
18 Mr. Brock's Facebook account.

19 MR. BURNHAM: Your Honor, it's tempting to take
20 this opportunity but they probably could come up with
21 something, so we'll agree they can come in.

22 THE COURT: All right. So you may proceed.

23 Q Thank you. Agent Moore, what are we looking at here?

24 A Posts made by Mr. Brock on Facebook in late
25 December 2020.

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1 Q Okay. And if you could read us the first one and let
2 us know the date, please.

3 A First one is December 28th, 2020, "Want to see some
4 panic. Start playing the Purge siren outside the Capitol on
5 6 January 2021. Watch Nancy flee."

6 Q And it's, Jan was the abbreviated form of January?

7 A That's right.

8 Q And who is Nancy, if you know?

9 A I would speculate.

10 THE COURT: It's speculation. We can all do the
11 same speculation.

12 Q The next message, please, Agent Moore, and the date?

13 A Next message, December 28th, 2020. "I need all people
14 that voted Democrat to wear a piece of cloth identifying you
15 as a nonfunctioning member of society. You need to do this
16 to flatten the curve. It is for our collective health. If
17 you refuse I will need to close your business and destroy
18 your livelihoods. Trust the science, if you vote Democratic
19 you are a moron and usually a leech on the body politic, so
20 please wear your cloth. I prefer the cloth to be a series of
21 concentric red circles over the heart. This will show you
22 care."

23 Q And the next post along with the date of that post?

24 A The next post is December 29th, 2020. "Expect Fakebook
25 to fact check it as they have deep admiration for Goebbels."

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1 Q And the last post and the date, please.

2 A The last post is December 31st, 2020, "'We are now
3 under occupation by a hostile governing force. That may seem
4 ludicrous to some, but I see no distinction between a group
5 of Americans seizing power and governing with complete
6 disregard for the Constitution and an invading force of
7 Chinese Communists accomplishing the same objective.'
8 Against all enemies foreign and domestic #oathkeeper #2A
9 #III percent."

10 Q Agent Moore, with the exception of the last sentence,
11 "against all enemies foreign and domestic," along with
12 hashtags, are the rest -- is the rest of that in quotes?

13 A It is.

14 Q Okay. Moving on to what's been marked as Government's
15 Exhibit 914.

16 MR. BURNHAM: No objection.

17 THE COURT: Thank you, Mr. Burnham, and without
18 objection, 914 will be admitted.

19 Q All right, Agent Moore, what are we looking at here?

20 A This is a comment that Mr. Brock made from his Torch
21 Flyer Facebook account on January 1st, 2021.

22 Q And what did it say?

23 A "Help is on the way. 6 Jan 2021 #MAGA
24 #Stormthecastle."

25 Q Do you know what MAGA stands for?

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1 A Make America Great Again.

2 Q Okay. Moving on to Government's Exhibit 915.

3 MR. BURNHAM: No objection.

4 THE COURT: Without objection, Government's 915
5 will be admitted.

6 Q All right. What are we looking at here, Agent Moore?

7 A It's a post made by Mr. Brock's Torch Flyer Facebook
8 account on January 5th, 2021. And he says, "Our second
9 American Revolution begins in less than two days."

10 Q Okay. And scrolling down --

11 THE COURT: Again, is that in quotation marks, or
12 appears to be?

13 THE WITNESS: Yes, your Honor.

14 Q And what is -- is there another message here, Agent
15 Moore?

16 A There is. It's another message from Mr. Brock's Torch
17 Flyer Facebook account, on January 3rd, 2021, also in quotes,
18 it says, "Irrelevant. Biden won't be inaugurated. We will
19 ensure that on the 6th."

20 Q Okay. And pulling up Government's Exhibit 916.

21 MR. BURNHAM: No objection.

22 THE COURT: Without objection, 916 is admitted.

23 Q All right, Agent Moore, what are we looking at here?

24 A A series of posts from Mr. Brock's Torch Flyer Facebook
25 account, starting on January 5th, 2021.

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1 Q Okay. And what does it say?

2 A "Plane is packed with people going to Stop the Steal."

3 Q And from there?

4 A Goes on to post, "AA bought four people off the plane
5 at a thousand dollars each."

6 Q And scrolling down. What's the date and the post on
7 this one?

8 A This date is January 6, 2021.

9 Q What does he say?

10 A "Here we go again."

11 Q And the next?

12 THE COURT: Perhaps you should for the record give
13 not only the date of something on January 6th but also the
14 time.

15 Q Okay. And what is the time here?

16 A The time here is 3:23 UTC which is five hours ahead of
17 Eastern Standard Time so this post was likely 10:23 p.m. on
18 January 5th.

19 Q Okay. And the next post, with the date and time as
20 well, please.

21 A Okay. Again, this is UTC time so this would have been
22 10:23 p.m. on January 5th, 2021, "Men with guns need to shoot
23 their way in."

24 Q Okay. And from there, what did Mr. Brock do?

25 A He posted ... on January 5th, 2021 at 10:57 p.m., he

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1 sent a message with an attachment and says, "Police in D.C.
2 are currently pepper spraying Trump supporters who are
3 outside rallying for Trump. Guess they forgot who was
4 backing the blue when BLM supporters aka Democrat voters were
5 killing."

6 Q Okay. And from there scrolling down. Okay. Is
7 Mr. Brock involved in a conversation with someone else?

8 A Yes, with someone named Shelley.

9 Q Okay. And what's the date on these and the time?

10 A This appears to be 11:33 p.m. on January 5th, 2021,
11 someone named HRM Shelley says, "Freaking Georgia."

12 Q And from there?

13 A Goes on to post, "I won't fly through ATL until they
14 get their crap together."

15 Q And from there?

16 A Mr. Brock responds, "What did you expect? There will
17 never be a free and fair election again."

18 Q And what was said from there?

19 A "As long as they can keep the fraud machine cranked."

20 Q And from there, Agent Moore?

21 A Mr. Brock goes on to write, "One man one vote. No
22 absentee unless military. Period." And he goes on to post,
23 "Seriously, did you expect them not to run the same play
24 again and again until we stop it?"

25 Q Okay. Agent Moore, I want to take you back to one

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1 thing we had discussed yesterday when you executed the search
2 warrant at Mr. Brock's residence.

3 A Yes, ma'am.

4 Q Did you find a gun safe there?

5 A We did.

6 Q Was there anything unusual about it?

7 A The code to the gun safe was left on the gun safe but
8 there were no guns in the safe.

9 Q Okay.

10 MS. AYERS-PEREZ: I pass the witness, your Honor.

11 THE COURT: Mr. Burnham?

12 MR. BURNHAM: Would this be a good time, even if
13 it's perhaps a little early, to take just a five-minute break
14 before we start cross?

15 THE COURT: The request is for our morning break
16 now, and I'm happy to honor that request, we'll take a
17 10-minute break.

18 MR. BURNHAM: Thank you, your Honor.

19 THE COURT: All right. So see you back -- well, it
20 will be 12 minutes to make it easy, I'll see you back at
21 11:00 by the clock on the back of the court.

22 MR. BURNHAM: Thank you.

23 (Court in recess, 10:48 a.m. to 11:05 a.m.)

24 THE COURT: All right, sorry for the delay, I hope
25 you made good use of the time, Mr. Burnham.

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1 MR. BURNHAM: Thank you, your Honor.

2 THE COURT: We need the witness. Special Agent
3 Moore. I remind you you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: And Mr. Burnham.

6 MR. BURNHAM: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. BURNHAM:

8 Q Good morning, Agent Moore.

9 A Morning, sir.

10 Q So it came out a couple times in your testimony that
11 you were in the Army for six years; that's correct, right?

12 A That's correct.

13 Q And am I correct in understanding you were in the
14 artillery was your part of it, is that right?

15 A That's correct.

16 Q All right. And that's shooting large guns in layman's
17 terms?

18 A That's correct.

19 Q And in your experience, did you learn that soldiers
20 that are in that branch for extended period of time might
21 suffer hearing loss?

22 A Yes.

23 Q All right. Because guns are extremely loud?

24 A That's right.

25 Q And aircraft engines are also very loud, would you

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John Moore - Cross

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1 agree with that?

2 A Yes.

3 Q Especially jet engines?

4 A I don't have direct experience but I'm sure they're
5 loud.

6 Q Thank you. Do you agree that the Punisher comic book
7 character is sort of an object of fascination in the military
8 these days?

9 A Yes.

10 Q You see it on Humvees and you see people with tattoos
11 and that kind of thing?

12 A Yes.

13 Q The famous soldier Chris Kyle, who you may know, the
14 Punisher was sort of his symbol, do you recall that, if
15 you're aware?

16 A I do.

17 Q Thank you. Would you agree that Larry Brock was
18 approximately 54 years old on January 6th, 2021?

19 A I actually don't recall his birthday, but if -- is that
20 how old he was?

21 Q Does that sound roughly correct?

22 A Yes.

23 Q Mid 50s I guess let's say?

24 A Yes, sir.

25 Q And you testified about some knowledge you gained about

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John Moore - Cross

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1 Mr. Brock's military career on direct, you recall that,
2 right?

3 A Yes.

4 Q And did you learn that he flew several hundred combat
5 missions?

6 A Yes.

7 Q And that's largely flying the A10?

8 A Correct.

9 Q You were assigned this case on the morning of
10 January 9th, is that right?

11 A That's correct.

12 Q And that was January 9th, that was a pretty hectic time
13 for law enforcement, would that be correct?

14 A Yes, sir.

15 Q And it sounds like you acted pretty fast to get the
16 information you needed to find out what the story with
17 Mr. Brock was, is that right?

18 A That's correct.

19 Q And I assume toward the top of that list of things you
20 had to do would be to get the CCTV feed footage and review
21 that?

22 A At that time, I didn't even know what CCTV was.

23 Q I understand, but I assume once you got assigned this
24 case involving the Capitol, one of first things you would
25 have done is call the Capitol and say do you guys have

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John Moore - Cross

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1 cameras, is that right?

2 A I mean, it wasn't one of the first things since there
3 was already overwhelming video evidence available, but that
4 was, you know, kind of further down the list of things we
5 did.

6 Q Okay. So it wasn't a priority for you to get the
7 cameras from inside the Capitol itself as soon as you could?

8 A My top priority was locating Mr. Brock and safely
9 arresting him --

10 Q I don't mean to cut you off, my question is
11 specifically not what was your top priority, my question was,
12 was it not a top priority to get the Capitol video footage in
13 the early part of the case?

14 A Yes, in the early part of the case as in, within the
15 first week, yes, that was a priority.

16 Q Approximately when did you receive the CCTV footage?

17 A I don't recall.

18 Q Can you give me a month?

19 A I believe it was in -- first, I don't recall.

20 Q You can't even give me a month?

21 A I can tell you it was in the winter or spring of 2021.

22 Q And spring meaning until May, could have been as late
23 as May or as early as January, is that the best we can do?

24 A Yes.

25 Q There were several videos introduced through your

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1 testimony from Mr. Brock's phone. You recall that, right?

2 A Yes, sir.

3 Q And two or three of them were short snippets of the
4 speech by former President Trump at the Ellipse, you recall
5 that?

6 A Yes, sir.

7 Q And whether or not it was captured on those videos, did
8 you learn that part of the remarks that the President made
9 was, we want to go to the Capitol, addressing the protesters?

10 A Yes.

11 Q And I think he said, I'll be there with you, is that
12 part of his remarks, to your knowledge?

13 A I don't recall the speech in that kind of detail.

14 Q Do you recall a video of the President that's in
15 evidence that says, I think this is pretty close to exact
16 quote, all Vice President Pence has to do is send it back to
17 the states and recertify. Do you recall that statement in
18 evidence?

19 A I do.

20 Q And do you understand the President, by using the word
21 it to be referring to the election results basically?

22 A Yes.

23 Q And what he was saying there was that he, according to
24 him anyway, the Vice President could refer the matter back to
25 the states and they could consider whatever issues had been

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John Moore - Cross

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1 raised involving fraud, illegality, whatever?

2 A Yes.

3 Q Were you -- you become aware as part of your
4 investigation that not everybody in the crowd but there were
5 a considerable number of people who made derogatory comments
6 about the Vice President that day?

7 A Yes.

8 Q Thank you. If the Government would be good enough to
9 help us, can we actually take a look at Number 325. And
10 while they're pulling that up, that video, I'll represent to
11 you is the one with the defendant wearing a vest and I think
12 your testimony on direct was that you thought it was -- it
13 could be the same vest as was shown in the January 6th
14 photograph but in different lighting; is that your testimony
15 about that?

16 A Yeah, I -- it appears to be a different color so it
17 could be -- it appears to be similar in design but I don't
18 know if it's lighting or whatnot but that looks like a
19 different color and it could be a different vest.

20 Q It appears to be tan, would that be --

21 A Yes.

22 Q What color military gear is typically worn in middle
23 eastern countries?

24 A I mean there's different shades, this is what I would
25 call coyote tan and I believe the vest he had on on

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A333

John Moore - Cross

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1 January 6th was green. Like I said yesterday, I don't know
2 if that's a function of the lighting in this picture or if
3 they're different vests.

4 Q Well, you're aware that Mr. Brock, if you are aware,
5 has been to the Middle East as a military officer and as a
6 civilian many, many times, is that correct?

7 A That's correct.

8 Q And the standard, let's say the standard BDU in fatigue
9 uniform in the Middle East is largely tan in color, not
10 green, correct?

11 A I -- having been there myself, there are -- I've seen
12 many people wearing green body armor in Iraq and Afghanistan,
13 so it's ... I've seen both.

14 Q Okay. You can take it down, thank you. There was
15 another piece of social media evidence that had -- 901, we
16 don't have to pull it up, that said #oathkeeper, you recall
17 that, right?

18 A Yes.

19 Q To be absolutely clear, there's no evidence that
20 Mr. Brock was a member of the Oath Keepers?

21 A No, there's not.

22 Q There's no evidence that he has ties to anyone in the
23 Oath Keepers?

24 A No, there's not.

25 Q Oath Keepers are not then and are not now an illegal

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John Moore - Cross

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1 organization, however disreputable certain people may think
2 they are, correct?

3 A Could you repeat -- do you say legal?

4 Q Illegal. The Oath Keepers were not then, nor are they
5 today, an illegal organization?

6 A That's correct.

7 Q And a hashtag on -- do you use social media, Facebook,
8 Twitter, whatever it is?

9 A A little bit, I'm not great with hashtags.

10 Q Hashtags, one of the uses of a hashtag is to facilitate
11 searching, is that right?

12 A I believe so.

13 Q If I wanted to, you know, find out the latest news on
14 the FBI, I might enter in #FBI and that would help me find
15 FBI news, is that your understanding?

16 A Yes.

17 MR. BURNHAM: Court's indulgence.

18 I'd like to turn on the document camera here.

19 THE COURT: I'm sorry, do you want to use the ELMO?

20 MR. BURNHAM: Yes, please.

21 THE COURT: Mr. Bradley can help you.

22 THE CLERK: It's not powering.

23 THE COURT: Well, I thought Mr. Bradley could help
24 you.

25 MR. BURNHAM: I just have two documents to show the

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1 witness, I can do it by -- and I'm just going to identify
2 them and I'll move it in with my case, I'll just do it with
3 the documents so we can --

4 THE COURT: If you're comfortable doing that.

5 MR. BURNHAM: I've shown it to the Government, I
6 can just do it that way. Can I approach the witness?

7 THE COURT: You may.

8 Q I'm going to show you a picture and you just tell me
9 whether or not you recognize the individual on the right.
10 It's marked for identification, your Honor has the same
11 binder, Defense 3. Tell me if it looks like Mr. Brock on the
12 right-hand side.

13 THE COURT: This is Defense 3?

14 MR. BURNHAM: Yes, your Honor, for identification.

15 A Yes, it does appear to be Mr. Brock on the right-hand
16 side.

17 Q And does that appear to be the -- I'll speak loud.
18 Does that appear to be the same jacket you later recovered
19 from his house?

20 A It does appear to be the same or at least a very
21 similarly patterned jacket.

22 Q I'll take it back. Thank you. I'm sorry, one more
23 question. That appears to be a ski lift of some sort in that
24 picture?

25 A Yes.

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1 THE CLERK: He said hold down on it.

2 MR. BURNHAM: It's all right, that's all I needed
3 to do for now, thank you. I'll move on, for now.

4 Again, going back to social media here, would you
5 agree that as a general matter, social media these days has
6 become famous for making people mad and making people get
7 into spats with one another; that's one of the criticisms of
8 it, is that right?

9 A I've heard that criticism, yes.

10 Q Can we take out -- can we pull up 904, please, one of
11 the Facebook messages. Can we scroll all the way to the top
12 of 904, very top of the page, even if it's blacked out.
13 Okay. Scroll down slowly if you would, and you can stop
14 there. You recall this exhibit, correct?

15 A I do.

16 Q So there looks to be a page worth of content blacked
17 out, and I'm not alleging that's improper, I'm just observing
18 it's blacked out, right?

19 A Mm-hmm.

20 Q And then below that --

21 A Yes, sir.

22 Q Sorry, didn't let you answer. Below that, it begins
23 with, "Torch Flyer replied to your comment," and then it goes
24 on, did I read that correctly?

25 A That's correct.

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John Moore - Cross

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1 Q So Torch Flyer is replying to a comment from Jeff
2 Ciaccio, is that right?

3 A That's correct.

4 Q And then the comment starts with, "No dude," and he
5 goes on to question whether Jeff Ciaccio was smart enough to
6 understand certain things. Is that some of the content of
7 this message here?

8 A Yes, it is.

9 Q So it would appear that Jeff and Torch Flyer,
10 Mr. Brock, are engaged in a sort of back and forth that's
11 getting a little personal; would that be a description you
12 could agree with?

13 A Yes.

14 Q All right, thank you. Have you ever been in an
15 internet argument where you said something you wished later
16 you could take back?

17 A No.

18 Q This same exhibit, we don't have to scroll to it, it's
19 already up there, refers to patriots in Athens in 1946; did I
20 read that correctly?

21 A Yes.

22 Q And you testified on direct that that refers to a
23 historical episode where World War II veterans stormed
24 National Guard armory to retrieve guns that were later used
25 to confront officials that they believed had committed

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1 election fraud. Is that a summary of that historical
2 episode?

3 A That's correct.

4 Q Washington, D.C. has a National Guard armory in
5 addition to other military installations, is that right?

6 A I would imagine they do.

7 Q And that National Guard armory presumably has guns?

8 A Yes.

9 Q And Larry Brock did not attempt to storm that National
10 Guard armory to your knowledge?

11 A Not to my knowledge.

12 Q The next -- we can take that down, thanks. Government
13 905, we don't have to bring it up unless you have trouble
14 recalling, has the statement from Torch Flyer where he says,
15 "If necessary I aim to misbehave." Do you remember that?

16 A Yes.

17 Q Does that sound a little funny to you, little perhaps
18 out of context for him?

19 A No.

20 Q All right. Have you seen the 2005 film *Serenity*
21 starring Nathan Fillion?

22 A I have not.

23 Q Are you aware that people that are good friends,
24 perhaps especially men with the risk of sounding gender
25 essentialist, sometimes speak to each other in movie quotes;

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1 is that something you're familiar with?

2 A I am familiar with that.

3 Q Thank you. That same exhibit has #resist, if you
4 recall that in there somewhere?

5 A It sounds familiar but I'd have to see the exhibit to
6 definitively say what was said by whom and when.

7 Q There it is. Do you see that there?

8 A I do.

9 Q Are you aware that #resist was actually a popular
10 hashtag throughout the Trump Presidency in what's called
11 liberal circles?

12 A No, I'm not familiar with that.

13 Q All right, that's fine. Are you aware of where the
14 term Beaf Supreame might have come from?

15 A I don't know where it came from.

16 Q All right, one more silly question. I'm not going to
17 belabor this but have you ever seen the film *Idiocracy*?

18 A No.

19 Q So I guess you wouldn't know whether or not *Idiocracy*
20 has a prominent character that goes by Beaf Supreame?

21 A I don't know.

22 Q All right. Does the film *Idiocracy* sound like a
23 serious film about geopolitics to you, just going by the
24 title?

25 A No.

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1 Q Are you aware of -- well, strike that. Can we pull up
2 907, actually. Can we scroll down just a little bit, please.
3 All right, we can stop there. Do you recall this exhibit?

4 A I do.

5 Q All right. And here is an example of Beaf Supreame and
6 Mr. Brock talking about various things they might do such as
7 peacefully occupying legislatures to combat election issues,
8 is that a good summary?

9 A That's correct.

10 Q All right. And here at the end, Beaf Supreame says,
11 "I'm pretty sure that I cannot get time off to go to another
12 state." Did I read that correctly?

13 A That's correct, that's the first sentence.

14 Q Would you agree it's nothing but good sense that if
15 you're going to occupy a state legislature, you should
16 probably square it with your boss ahead of time?

17 A As far as square the time off or the active occupying
18 the legislature?

19 Q I'm sorry, I didn't hear you.

20 A Are you saying would you square getting time off or
21 occupying the legislature with your boss?

22 Q Getting time off.

23 A You probably should, yes, square getting time off.

24 Q We can move on, thank you. Could we look at 909,
25 please. Court's indulgence.

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John Moore - Cross

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1 THE COURT: Is this where you want to be or are you
2 trying to get to another --

3 Q Just trying to center myself here, there was a passage
4 from this but I thought I could find it quicker than that, so
5 I don't have to trouble the Government to scroll for me.

6 Sir, can we look at the message, there's a message at
7 12/18/20, 16:32:19, that's the one I'm trying to look at.
8 There we go. All right. You see the message there,
9 16:32:19, do you see where I'm looking here?

10 A I do.

11 Q That message says, "Can you imagine if several hundred
12 thousand patriots descended on D.C. refusing to let Biden be
13 inaugurated," did I read that correctly?

14 A You did.

15 Q So the inauguration was not on January 6, is that
16 right?

17 A That's correct.

18 Q That was scheduled to take place on January the 20th, I
19 think, is that right?

20 A That's right.

21 Q Can we look at Number 910, please, the next one.
22 Before we get to this message, you're aware and I think we
23 even had some testimony about it, is that the Congress
24 reconvened on January 6th later that evening. I can't
25 remember the time but it was late in the evening, do you

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1 recall that? Or do you know that?

2 A I do know that, yes, they did.

3 Q And once they reconvened, excuse me, they sort of
4 picked up where they had left off around 2:00, is that right?

5 A They finished, they finished what they were doing in
6 the early hours of January 7th.

7 Q So early -- on January 6th in the morning they had made
8 it through a certain number of states and then there was the
9 interruption and then they picked up with the rest of the
10 states that evening; is that all correct based on your
11 knowledge?

12 A Yes.

13 Q And so the ultimate decision of whether or not the
14 results of the election were going to be certified didn't
15 take place until after the Capitol had been cleared and the
16 legislature had reconvened, correct?

17 A Only because the Capitol had to be cleared, yes.

18 Q So in other words, the answer is yes, the certification
19 didn't happen until later on, right?

20 A That -- yes, that's correct.

21 Q Because the Vice President and the legislature were not
22 going to be deterred from following the Electoral Count Act
23 as it was set forth, right?

24 A That's correct.

25 Q They didn't throw it out the window because of the

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1 interruption, right?

2 A That's correct.

3 Q All right. So we've got 910 up here. You recall this,
4 this is -- this is the, I guess we'll call it a
5 point-by-point plan that seems to be presented here, you
6 recall this, correct?

7 A I do.

8 Q All right. And so in response to the messages from
9 Mr. Brock, Beaf Supreame raises a number of seemingly
10 sensible responses to what you would need to do if you wanted
11 to take over the government; would that be generally what
12 he's doing here?

13 A Yes.

14 Q He points out, for example, that you would need, it
15 would probably be a good idea to have a chain of command and
16 secure communications if you were going to pull off something
17 like that; is that part of what he says here?

18 A That's correct.

19 Q And you agree that Mr. Brock seems to agree that you
20 probably ought to have a chain of command and some
21 communication if you're going to have a revolution, is that
22 basically his response?

23 A Yes.

24 Q And at a certain point, feel free to refresh your
25 recollection, Mr. Brock says that this really isn't his area

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1 of expertise being a pilot or something to that effect,
2 correct?

3 A I believe he said this wasn't what he was trained for
4 but if you can scroll down on the exhibit, I just can't see
5 that part right now. Yes.

6 THE COURT: I think you're going past it now.

7 Q It's right there if you want to read it. I can ask it
8 more directly. At 23:43:06 UTC time he says, "This isn't
9 what I was trained to plan," that's what Mr. Brock says, did
10 I read that correctly?

11 A You did.

12 Q Towards the end of this discussion, Beaf Supreame again
13 raises the sensible point that, an enterprise like this is
14 probably going to be pretty expensive, is that one of the
15 points he makes? Feel free to ask, we can scroll down.

16 A Yeah, could you scroll down, please.

17 Q You can stop there, I'll ask the question directly. At
18 12 -- 23:52:43 Beaf Supreame says, "Okay, first thing to
19 figure out is who is the source for op funds," did I read
20 that correctly?

21 A You did.

22 Q This exchange came after the plans had to be put on
23 hold for Mr. Brock to go take a shower, is that also correct?

24 A That's correct.

25 Q And eventually down there, Mr. Brock seems to agree

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1 that you ought to have some money to pull off a plan of this
2 nature; is that a good paraphrasing of what he says?

3 A Yes.

4 Q At any point in this conversation does either Beaf
5 Supreame or Mr. Brock come up with any ideas of where to get
6 billions of dollars or where it would come from?

7 A I mean not with a concrete plan, just that they need to
8 find someone with the money.

9 Q And what time -- I guess what time in Texas time would
10 be 00:29:52, the last message there?

11 A It would be six hours ahead of that message so
12 6:29 p.m. on Christmas Eve.

13 Q Well, this conversation begins on Christmas Eve, looks
14 like it ends on Christmas Day or at least Christmas Day in
15 certain time zones, would that be generally right?

16 A Yes.

17 THE COURT: Wait a minute, the time of 00:29:52 on
18 Christmas Day UTC is what time you're indicating?

19 THE WITNESS: Your Honor, that would be 6:29 p.m.
20 on Christmas Eve.

21 Q In Texas?

22 A In Texas central time.

23 Q Can we look at 916, please. And can we scroll down a
24 little bit here until it gets to the messages from user
25 Shelley. Okay, can we stop there. Actually scroll up just a

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1 little bit to the "Shoot their way in" messages if you would,
2 thank you. Little bit more. Right there, thank you. You
3 introduce this message here, part of which says from
4 Mr. Brock, "Men with guns need to shoot their way in." Did I
5 read that correctly?

6 A You did.

7 Q And then Mr. Brock sends an attachment that refers to
8 police in D.C. in the next entry, do you see that?

9 A I do.

10 Q And then HRM Shelley responds, "Freaking Georgia." Did
11 I read that correctly?

12 A You did.

13 Q Does a reference to Georgia seem a little out of
14 context in view of Mr. Brock's two previous messages?

15 A No, I believe they're talking about the Georgia
16 election results which were being decided at that time.

17 Q That's right, and men with guns need to shoot their way
18 in is referring actually to the counting of the ballots and
19 interference with Republican watchers alleged in Georgia,
20 right?

21 A It could be, I'm not certain.

22 Q Well, let me refresh your recollection on that. If I
23 can just pull up the ... court's indulgence, I thought I had
24 it right here.

25 THE COURT: Certainly.

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John Moore - Cross

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1 MR. BURNHAM: I think I can find it pretty quickly.

2 (Pause in Proceedings.)

3 Q All right, I think I've got it here, sorry for the
4 delay. I'm just going to do this with my laptop, I'm
5 afraid -- I'm just refreshing recollection, what I'm -- for
6 everybody's -- I'm going to show the witness the unredacted
7 version of this and see if it refreshes his recollection, if
8 I can approach.

9 THE COURT: You're going to show him on your
10 laptop?

11 MR. BURNHAM: I don't have -- I have to, it's a
12 little sloppy.

13 THE COURT: Is this the transcript?

14 MR. BURNHAM: No, this is this very same exhibit,
15 just unredacted, that's all it is.

16 THE COURT: Okay.

17 MR. BURNHAM: I'm just going to show him on my
18 laptop --

19 THE COURT: Check with the Government, make sure
20 the Government is comfortable. If they have an objection,
21 they'll make it.

22 MR. BURNHAM: Can I approach, your Honor.

23 THE COURT: You may.

24 Q Agent Moore, I'm going to hand you my laptop here and
25 feel free to take as much time as you want but if you start

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1 with the highlighted portion that refers to pointing to here
2 and then just read down as much as you need.

3 A Okay.

4 Q Let me know when you've finished.

5 A I'm finished.

6 Q Thank you. So now would you agree with me that the
7 statement meant -- well, first of all, did that refresh your
8 recollection?

9 A It did.

10 Q All right. So now you would agree with me, wouldn't
11 you, that the, "Men with guns need to shoot their way in,"
12 post pretty clearly refers to a situation in Fulton County
13 involving Republican poll monitors allegedly being blocked?

14 MS. AYERS-PEREZ: Your Honor, I'm going to object
15 to that, I mean he can certainly testify as to what messages
16 were around there but what it actually references, I think
17 that's something that would be speculation for him.

18 THE COURT: Well, we'll let the witness respond to
19 the question as asked. Go ahead and respond. So the
20 objection, to the extent that was an objection, is overruled.
21 You may respond to the question.

22 A The Facebook post that preceded that post about
23 shooting your way in was a post about election results in
24 Georgia.

25 Q And specifically it was about, whether or not it

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1 happened is another question, but it was about Republican
2 poll monitors being blocked from overseeing the count,
3 correct?

4 A I guess I -- I would need to see that again.

5 Q You want --

6 A Something about Fulton county, Georgia.

7 Q I'll just let you take a quick look, if I can approach.

8 A Sorry about that. Yes, that's correct, it's about
9 Republican poll watchers.

10 Q Thank you. Would you agree that given the charges in
11 this case, that was some pretty important context for the
12 "men with guns" statement?

13 A I don't believe it was left out to deny context, I
14 think it was left out out of -- redacted for anonymity for
15 other Facebook users.

16 Q Do you recall testifying at a prior proceeding in this
17 case in Texas?

18 A I do.

19 Q All right. And during -- that was a detention hearing
20 for Mr. Brock, correct?

21 A Yes, I recall, yes.

22 Q And feel free if you need to look at your testimony
23 I'll ask you just a couple questions about that. You
24 didn't -- you make several references to the flex cuffs
25 pursuant to a government attempt to detain Mr. Brock pending

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1 trial, correct?

2 A That's correct.

3 Q All right. And at no point did anybody, yourself or
4 the U.S. Attorney, inform the judge in Texas that there was
5 evidence that Mr. Brock had found those flex cuffs in the
6 Capitol, correct?

7 A I would need to take a look at that transcript.

8 Q Sure. And I'll ask ... well, I'll ask one other
9 question and you can refresh your recollection as to both if
10 you'd like.

11 A Okay.

12 Q There was a statement not from you but from the U.S.
13 Attorney that perhaps he had those flex cuffs there to take
14 hostages, took them with him to take hostages, do you recall
15 that being part of the case for detention?

16 MS. AYERS-PEREZ: Objection, your Honor, this has
17 no bearing on our actual case, what happened at a detention
18 hearing in Texas almost two years ago. We haven't made that
19 allegation here, and we see video evidence and we've
20 stipulated actually to video evidence we stipulated that he
21 did pick up the flex cuffs later inside the Capitol. We have
22 that footage now so I'm not sure what relevance this hearing
23 two years ago almost has on this.

24 THE COURT: Well, I'm going to overrule the
25 objection, the Government's case did at several points have

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1 witnesses point out that he had, that Mr. Brock had flex
2 cuffs. Now there was later clarification as to when he may
3 have acquired or how he may have acquired them, but it did
4 seem important to the Government witnesses to point out that
5 Mr. Brock had the flex cuffs so I'm not going to prohibit
6 questioning with respect to the reason the Government might
7 have at some point, and I understand that we're talking about
8 back at that time of the detention hearing, have thought
9 something in particular with respect to the flex cuffs. So
10 you can go ahead, and first I'll say, Mr. Burnham, you can
11 ask the question, and then, Agent Moore, you can answer it.

12 Q All right. The first question is, just to recenter us
13 is, I'm asking you isn't it true that you participated in a
14 Government attempt to detain Mr. Brock during which the
15 allegation was made that he was carrying flex cuffs to
16 restrain hostages, and this was by the U.S. Attorney, not
17 yourself, and so I will let you look at the transcript and
18 I've got it on a page I think is the relevant page but if
19 you'd like to look around, you certainly can.

20 THE COURT: So, so we're trying to put before me a
21 statement made by the U.S. Attorney in the detention hearing
22 that Mr. Moore was present at?

23 MR. BURNHAM: And then there's going to be, that's
24 going to be the first question, then the second question is
25 going to be during his testimony did he ever let the judge

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1 know Mr. Brock found those cuffs there. And I'll let the
2 witness answer, but I have an answer that I'm expecting and I
3 think it goes to the overall credibility of the investigation
4 and it ties in with other aspects of the Government's case
5 that we think --

6 THE COURT: I'll let you do it, go ahead.

7 MR. BURNHAM: Thank you.

8 A Thank you. (Witness reviewing transcript.) So I've
9 read through the conversation by the AUSA about flex cuffs.

10 Q All right. Did that refresh your recollection?

11 THE COURT: Well, why don't you take back the
12 document.

13 Q Yeah, I'll take that. Did that refresh your
14 recollection about that hearing?

15 A Yes.

16 Q All right. So isn't it true that the AUSA made the
17 allegation that perhaps the flex cuffs were something
18 Mr. Brock brought with him perhaps to take hostages, as part
19 of the case, correct?

20 A He also said, whether or not they were a fortuitous
21 find, it doesn't matter and he still walked around with them
22 for a significant amount of time, so I don't think that was
23 disingenuous.

24 Q And in fact it's absolutely the case that they were
25 found there, that wasn't a whether or not, that's what

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John Moore - Cross

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1 happened; you'd agree with that, correct?

2 A I agree that they were found, I can't agree to his
3 intent --

4 Q And at no point -- I'm sorry, finish your answer.

5 A He didn't immediately throw them in the trash, he
6 walked around in the Senate Chamber with a pair of flex cuffs
7 in his hand, so just like AUSA Jay Weimer said, whether
8 they're a fortuitous find or not, it's a concerning thing.

9 Q And at no point in your testimony did you inform the
10 judge that in fact there was video evidence that he found the
11 flex cuffs there at the Capitol?

12 A No, I did not.

13 Q And being detained pending trial can absolutely destroy
14 a person's life, correct?

15 That's all right, you don't have to answer,
16 can I have -- I withdraw the question. Can I have a moment,
17 your Honor?

18 THE COURT: Certainly.

19 (Pause in Proceedings.)

20 MR. BURNHAM: Thank you, your Honor, just a couple
21 more.

22 Q Just a couple of housekeeping things I guess you would
23 say. I think this is in evidence but you would agree that
24 the electoral session of Congress adjourned around 2:13 p.m.
25 in response to the first entrance into the Capitol?

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John Moore - Cross

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1 A I'm not sure of the exact time but somewhere in that
2 neighborhood.

3 Q Let me show you another document here that I've
4 previously shared with the Government, I'll remind them now.
5 I'm going to show you a document, and again, I'm just going
6 to have the witness identify it and then I'll move it in
7 later.

8 THE COURT: Is it marked?

9 MR. BURNHAM: Yes, it's marked for identification
10 in your Honor's binder as Number 5.

11 THE COURT: Number 5, okay.

12 Q I'm going to show you a document, ask you to read --
13 you can read as much as you want but I ask that you read the
14 second paragraph, please. Let me know when you're done.

15 A I've read the second paragraph.

16 Q So first of all, does that appear to be an article
17 about politics from the internet?

18 A It -- it does.

19 Q Are you familiar with *American Thinker*?

20 A I am not.

21 Q Do you recognize that second paragraph as being quoted
22 in one of the exhibits from Facebook that we've put, that the
23 Government's put into evidence?

24 A I mean, it sounds familiar to a lot of the rhetoric but
25 I would need to see the exhibit to make a direct link.

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1 MR. BURNHAM: Court's indulgence. You know, I
2 don't want to waste the Court's time, I don't have that
3 exhibit number right at my fingertips, I don't know how --
4 I'll make the connection in my case if I need to. Our
5 contention is it's a direct quote, I'll let your Honor look
6 at the two as soon as I can, I wasn't going to move it now
7 anyway so I'll withdraw the question for now.

8 THE COURT: All right. Sounds fine to me,
9 Mr. Burnham.

10 MR. BURNHAM: I can -- can I approach the witness?

11 THE COURT: Yes.

12 MR. BURNHAM: All right, thank you, no further
13 questions.

14 THE COURT: Redirect? Ms. Ayers-Perez?

15 MS. AYERS-PEREZ: Briefly, your Honor.

16 REDIRECT EXAMINATION BY MS. AYERS-PEREZ:

17 Q Agent Moore, I just have a couple of questions for you.
18 Do you remember the month that that detention hearing took
19 place in Texas?

20 A January of 2021.

21 Q Was it pretty soon after you had arrested Mr. Brock?

22 A It was.

23 Q Did you collect evidence on a continuing basis after
24 that?

25 A Yes.

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1 Q Did that include things like videos and things of that
2 nature?

3 A Yes, it did.

4 Q Would it be fair to say you learned a lot about the
5 case since then?

6 A Since -- yes.

7 Q Okay.

8 MS. AYERS-PEREZ: Okay. That's all I have, your
9 Honor.

10 THE COURT: All right. Agent Moore, you may step
11 down. I won't excuse you since you're permitted to stay in
12 the courtroom.

13 (The witness was excused.)

14 THE COURT: Ms. Ayers-Perez, further evidence from
15 the Government?

16 MS. AYERS-PEREZ: Your Honor, Agent Moore's our
17 final witness. We have a couple of housekeeping matters with
18 some exhibits prior to resting.

19 THE COURT: First question I have is, are all the
20 stipulations in? I don't think I've actually at least marked
21 a couple of them so I'm not sure that they've been
22 introduced, and should they be introduced?

23 MS. AYERS-PEREZ: Yes, your Honor. And so that
24 was -- I haven't marked, three of them have not been
25 introduced.

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1 THE COURT: 703, 704, and 705?

2 MS. AYERS-PEREZ: That's correct, your Honor,
3 that's what I have been marked as not being introduced so I
4 would move to admit 703, 704, and 705 marked for the
5 Government at this time.

6 THE COURT: And they are stipulations so there's no
7 objection to them so I will go ahead and admit 703, 704, 705.
8 Any problem with that, Mr. Burnham?

9 MR. BURNHAM: Fine, your Honor.

10 THE COURT: Thank you. 703, 704, and 705 are
11 admitted.

12 MS. AYERS-PEREZ: And also there are some exhibits
13 in the 600 series we would move to admit. These are just the
14 legal background as to the Electoral College and they go hand
15 in hand with the stipulations 702 that's already been
16 admitted at Government's Exhibit 702 and this is just to
17 complete the record, your Honor, and that would be 600, 601,
18 I'll just do 600 through 610. And I also show that 613A, B,
19 C, D, and E as well as 614 did not get admitted and I would
20 move to admit those exhibits at this time.

21 THE COURT: So 600 through 610 are actually to some
22 extent legal documents but you say that they're referenced in
23 the stipulation which is 702 did you say?

24 MS. AYERS-PEREZ: Yes, 601 through 610 are the
25 legal documents and that goes hand in hand with Government's

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1 Exhibit 702 which is the stipulation regarding the Electoral
2 College proceedings and 600 is a video regarding what
3 happened in Congress that day which goes hand in hand with
4 Government stipulation, Government's Exhibit 703 which is the
5 stipulation to the authenticity of the House and Senate
6 recordings, and so I would move to admit 600 through 610
7 right now.

8 THE COURT: Any problem, Mr. Burnham, with 600
9 through 610 being admitted?

10 MR. BURNHAM: No, your Honor.

11 THE COURT: All right. I will therefore admit 600,
12 601, 602, 603, 604, 605, 606, 607, 608, 609, and 610.

13 MS. AYERS-PEREZ: And then also 613A, 613B, 613C,
14 613D, 613E, and 614, those are the CSPAN videos, 614 is CSPAN
15 video, 613A through E are just still shots from 613, 613 I
16 show was admitted yesterday at 2:00. I would move to admit
17 those now as well to complete the record.

18 THE COURT: All right. So the description is 613A
19 through E are still shots from the 613 video that is in
20 evidence already; any problem with those, Mr. Burnham?

21 MR. BURNHAM: No, your Honor.

22 THE COURT: And then 614 is another video?

23 MS. AYERS-PEREZ: Yes, your Honor, that's just a
24 continuation of 611, 612, and 613.

25 THE COURT: Any objection to 614, Mr. Burnham?

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1 MR. BURNHAM: No, your Honor.

2 THE COURT: All right. So 613A through E and 614
3 are admitted.

4 MS. AYERS-PEREZ: Okay. All right. That, your
5 Honor, at this time the Government would rest.

6 THE COURT: The only things not admitted would be
7 the beginning of the 300 series, 300 through 305.

8 MS. AYERS-PEREZ: Yes, your Honor.

9 THE COURT: And that one document earlier, I think
10 204 was never admitted.

11 MS. AYERS-PEREZ: That's correct, your Honor, those
12 are correct.

13 THE COURT: All right. With that, the Government
14 has rested. Mr. Burnham, I will turn to you.

15 MR. BURNHAM: Thank you, your Honor. Make a motion
16 to dismiss under Rule 29. I'll make the motion as to every
17 element of every charge technically but I'll focus on the
18 ones that I think are most important and I'll take the counts
19 in order.

20 I think there's really two issues that present
21 themselves with respect to Count One which is the 1512
22 obstruction count. One is, it's an undisputed fact of this
23 case, even taking the evidence in the light most favorable to
24 the Government, that Congress had already adjourned by the
25 time Mr. Brock entered the building, and I think it can be

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1 pretty clearly inferred that it adjourned before he got even,
2 even at all close to the building.

3 THE COURT: He entered at 2:24.

4 MR. BURNHAM: 2:24, and Congress adjourned at 2:13.
5 So even with taking all the inferences most favorable to the
6 Government, I think the court should conclude that at 2:13,
7 Mr. Brock was probably at least several hundred yards from
8 the building. And so by the time he got there, there was no
9 proceeding left to attempt to corruptly influence, impede and
10 so on and so forth. Unless the Government can make a case
11 that he could somehow attempt to impede the proceeding in the
12 future, there's no crime here. Perhaps we'll hear when the
13 Government has a chance to respond, the argument may be,
14 well, the fact that there was so many people there meant they
15 couldn't reconvene as quick as they wanted to because they
16 had to get all those people out. But then the question
17 before the Court becomes, does one more person being in the
18 Capitol constitute anything other than a de minimus
19 obstruction. We suggest even at the Rule 29 stage it
20 doesn't. That's one problem.

21 The second problem is, is that there's the question
22 of intent that was previewed to the Court in opening
23 statements. And you know, here, we get into the Facebook
24 messages that are in evidence. Well, I guess there was one
25 that was conditionally admitted, perhaps I should ask for the

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1 Court's ruling.

2 THE COURT: I need to go back to that and I will go
3 back to that perhaps just to clarify it. Based on -- I
4 conditionally admitted 902 and that was to see what the rest
5 of the Facebook-related exhibits would be and having reviewed
6 and decided on them, I will remove the conditional aspect of
7 that admission of 902 and it is admitted unconditionally.

8 MR. BURNHAM: So that's I guess the most direct
9 evidence of intent that we have. The court can of course
10 infer and all those inferences go in favor of the Government
11 at this stage but let's take the direct evidence that we
12 have, and I think that the thought process at Rule 29 is,
13 let's take all of those messages as literally true, not
14 hyperbole, not blowing smoke, like really true, which is the
15 view most favorable to the Government. Even then, what's set
16 forth is that we really, really hope Congress acts, and if it
17 doesn't act, maybe we'll take over the government. But the
18 hope expressed in those messages was that the Congress would
19 have the opportunity to correct the fraud that Mr. Brock
20 seems to have believed occurred, and then revolution, if they
21 didn't do that. So all of the talk about revolution and so
22 on and so forth is sort of plan B if Congress doesn't act
23 which means it's not relevant to the question of is there
24 intent here to obstruct the electoral count, and so I would
25 argue even at the Rule 29 stage that Facebook posts are

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1 highly exculpatory even when taken in the light most
2 favorable to the Government. So really two problems with
3 Count One. No obstruction and no corrupt intent.

4 Count Two and Three, I'll start with -- Count Two
5 and Three to a certain extent can be taken together because
6 they both are 1752 charges that have some common elements.
7 So with respect to both of those, our contention is that at
8 least by the point that Mr. Brock arrived on the scene, the
9 Capitol grounds were not legally restricted. Certainly they
10 were restricted in a platonic sense and that that was the
11 intent of law enforcement that day, we saw a diagram.

12 THE COURT: You're talking about the grounds.

13 MR. BURNHAM: The grounds, the grounds. There was
14 the perimeter, I don't dispute that it was the intent of the
15 Capitol Police and others to restrict the grounds both
16 practically and legally. But the way the cases treat that
17 element, and this is the individual being prosecuted has to
18 be on notice of the restriction. And there's not a ton of
19 cases on this but the one that I think is helpful is *McCabe*
20 *v. Macaulay*, 51 F.Supp.2d 944, and that -- there's a case
21 before that, *Bursey*, which was a Fourth Circuit case that's
22 persuasive but I think it makes sense that basically says
23 even if there's not a fence, if officers tell you you have to
24 leave, that's a restriction even though might not seem like
25 one, and then *McCabe v. Macaulay* is sort of the logical

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1 consequence of that is, if there's not a fence or something
2 and the defendants aren't on notice, then it's not legally
3 restricted and sort of a weird procedural posture in that
4 case but the ultimate holding was there was no probable cause
5 to arrest for 1752 because the defendants didn't know it was
6 restricted and then when the officer said it was restricted,
7 they left so that's the takeaway there. So the question even
8 at Rule 29 is, where's the evidence that Mr. Brock was on
9 notice that he was entering a legally restricted area? And
10 so there's --

11 THE COURT: And you're still talking about the
12 grounds at the moment.

13 MR. BURNHAM: The grounds and the building.

14 THE COURT: Or talking about the building as well?

15 MR. BURNHAM: I guess in theory the restriction
16 could be anywhere as long as police communicated to Mr. Brock
17 that he wasn't supposed to be there, either on the grounds or
18 as he was coming up or at the door. Taken in the light most
19 favorable to the Government, they don't need to do it at a
20 specific time, there just has to be something, and we don't
21 have any evidence that Mr. Brock would have seen the
22 barriers, let alone participated in removing them. There's
23 no evidence that any officer, whether, whether when he was
24 entering the grounds or whether when he was entering the
25 building said, you're not supposed to be here, it's

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1 restricted, you have to leave. Just didn't happen. In fact
2 the evidence is he happened to walk through the door at the
3 little five-minute interval where there weren't any officers
4 there to tell him that.

5 And so then for 90 percent of the video that has
6 him walking around the Capitol, there's no officers there,
7 and then towards the end, he encounters some and there's no
8 sound so we don't know what they said but the conduct of
9 Mr. Brock and the officers, I think even in the light most
10 favorable to the Government, shows that he did leave
11 voluntarily well before the building was ultimately cleared
12 and without offering resistance to the officers, you can see
13 that especially in the final video where he walks out under
14 the supervision of officers. So the question is where is the
15 restriction. I just don't see it anywhere here.

16 THE COURT: So would there be a restriction for the
17 fifth person in line who was standing behind the first four
18 people who broke windows and pushed open the door to enter
19 the Capitol? So what about that fifth person, would that
20 fifth person have a restriction relevant to them?

21 MR. BURNHAM: If the fifth person had seen the
22 windows being broken, I think there would still be --

23 THE COURT: How about seeing glass on the floor?

24 MR. BURNHAM: Well, if there's evidence to permit
25 the Court to find that there was glass on the floor, that

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1 might support a restriction but I think even at the Rule 29
2 phase, it doesn't get you all the way there, if that's all
3 you have. I mean the case -- what we're looking for is a
4 sign, a fence, an officer saying get out of here. Glass on
5 the floor is not a -- I would argue that even that doesn't
6 get you anywhere close to a legal restriction. There's
7 certainly no case that would support a restriction based on
8 glass on the floor, especially since --

9 THE COURT: What about someone who's in the mob,
10 shall we say, who saw from behind them, not the front rank,
11 the barricades being breached, police lines being parted,
12 pushed aside, and then going up to the Capitol and going into
13 what had been a closed building? Are you excusing everyone
14 who's in the large gathering because when they actually got
15 to the Capitol doors, others had already breached them?

16 MR. BURNHAM: If someone witnessed other protesters
17 fighting with police or physically against police will
18 removing the barricades, that would be legally restriction,
19 there's no question about it, I would agree with that, but I
20 don't think that's the case here. There's no evidence for
21 the Court, from which the Court can infer that Mr. Brock
22 witnessed that; in fact the evidence is opposite. He was
23 probably pretty far back. I mean you could sort of infer
24 that from when he entered, the time, and secondly, the one
25 little snippet -- we only have one little snippet of his

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1 approach, that's it, that's the video where you can see the
2 back of his helmet for like very briefly is the only evidence
3 we have of how he got from -- we have him walking down
4 Constitution, and then the record goes dark and then you see
5 his helmet very briefly so we got to look at that video of
6 the back of his helmet and see what, if anything, does that
7 tell us and I think it's exculpatory because he's very far
8 back at that point from the entrance. You can watch the
9 video, there's no view of the barricade, in fact one of the
10 officers even admitted you can't see that portion, it was
11 Officer Patton who admitted you can't see that portion from
12 downstairs which is where that video was shot and you can see
13 how thick the crowd is and how loud they were. There's every
14 reason to infer from that video that Mr. Brock would not have
15 had any opportunity to witness the destruction of those
16 barriers. So that's, I think that's the correct finding even
17 at Rule 29 there.

18 Now, the fallback that your Honor has already
19 telegraphed, maybe we'll hear this from the Government, was,
20 well, he had to have seen the broken glass or he had to have
21 seen a broken window, there's no way he didn't, and I think
22 even in Rule 29 that argument doesn't wash because you can
23 see when he walks in, he's not looking from side to side, it
24 doesn't happen. And even if he had looked from side to side,
25 the glass panes are completely removed at that point, there's

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1 no shards, there's no like partial windows, certainly there's
2 no one there still trying to take him out, so it's not
3 something the court can conclude he would have legally been
4 on notice of. The broken windows and the glass is hard to
5 see, I even had to watch the video several times to notice
6 it, it's off to the side. Obviously glass is opaque, it's on
7 the floor --

8 THE COURT: We see more than he saw because we see
9 it actually at one point large plates of glass being cleared
10 by an officer pushing it aside with his foot.

11 MR. BURNHAM: Before and after the fact, that's
12 right. So I think if there was even a glance to the side,
13 you know, by Mr. Brock towards the direction of the glass, I
14 might have a much harder time but we don't have that, so
15 there's nothing even at this stage to conclude that he would
16 have seen the glass. I think that's the situation here.

17 So that would be, if the court agrees with that
18 argument, doesn't need to go any farther on Counts Two and
19 Count Three but just for the record, specifically as to, I
20 think this really applies more to Count Three, I'm not seeing
21 the disorderly conduct here. There's no yelling, you know,
22 there's no -- he's not participating in chants. Obviously
23 we've emphasized when he tries to maintain order, that
24 happened four times, there's no pushing and shoving, he's not
25 carrying a sign, he's not acting crazy the way some of the

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1 people were. It's not simply enough to enter a restricted
2 area to be guilty of Count Three, you have to then do
3 something that's likely to cause a disruption and I don't see
4 that with Mr. Brock at all, in fact quite the contrary.

5 THE COURT: Well, the term is disorderly or
6 disruptive conduct.

7 MR. BURNHAM: That's right.

8 THE COURT: Disruptive conduct as defined in the
9 relevant provisions is disturbance that interrupts an event
10 or activity or the normal course of a process. So you're
11 saying that that wasn't the case.

12 MR. BURNHAM: Simply entering can't be enough
13 because it can't be coextensive with entering the restricted
14 area.

15 THE COURT: Well, he didn't enter alone, he entered
16 with a vast number of other people.

17 MR. BURNHAM: Yes, your Honor. It's not a
18 conspiracy case, and if the allegation is aiding and
19 abetting --

20 THE COURT: But it's not irrelevant that he was one
21 of many.

22 MR. BURNHAM: Well, if inherently entering is one
23 of many, I think even under the definitions your Honor cited
24 which are correct is he would have to be aiding them in some
25 way or approving of their conduct or assisting to have him be

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1 culpable for himself engaging in disorderly conduct. If the
2 allegation is merely entering itself with a large number of
3 people is disorderly conduct, there's not a case on this but
4 just based on the plain language of the cases we do have --

5 THE COURT: Not disorderly, disruptive.

6 MR. BURNHAM: Disruptive conduct, we're looking for
7 something -- it doesn't have to be a lot, I'm not saying he
8 had to be smashing things but something to disrupt the
9 function of government business other than just walking
10 around which is the same thing the journalists were doing.
11 We know journalists were there that day, some people were
12 manifestly journalists in the video, they were walking
13 around, they contributed to the number. There were invited
14 guests, that contributed to the number of people but they
15 obviously wouldn't be included, and so unless the Government
16 can point to something saying this is an action Mr. Brock
17 took that was disruptive and went beyond merely entering,
18 even under Rule 29 is a problem with that count too, I would
19 maintain.

20 THE COURT: What else?

21 MR. BURNHAM: Count Four, willfully entering the
22 floor of Congress, that has to be done willfully and we don't
23 have any communication to him that that was unauthorized for
24 him to be there. He did not participate in the, you know,
25 there was, the testimony from Officer Timberlake --

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1 THE COURT: Your problem is that he didn't know
2 that it was without authorization?

3 MR. BURNHAM: That's right, that's right. There's
4 testimony from, I guess the closest thing to that would be
5 the testimony from Officer Timberlake and he testified that,
6 you know, he's there, he's trying to secure the doors and
7 then he gets into the confrontation so obviously those people
8 would have been on notice that they weren't supposed to go in
9 there because the officer -- I mean, he was in plain clothes
10 and it could be an issue if it needed to be but I don't think
11 it needs to be, is the officer was physically trying to stop
12 those people from going in. And then there's the scuffle and
13 you can see Mr. Brock coming in from a different section, he
14 walks into the side of the video from some other part of the
15 Capitol, not adjacent to where the scuffle had taken place,
16 and by the time he comes in the video, it wouldn't have been
17 apparent what the subject of the dispute was because both the
18 officers and their antagonists had moved down the hall
19 significantly away from the door there. And there's no -- I
20 mean Officer Timberlake didn't testify he told Mr. Brock, you
21 guys can't go in there or those guys, I was trying to keep
22 them out and they tried to force their way in or anything
23 like that, he didn't have those statements so that's the
24 problem with number four.

25 Count Five is a different version of disorderly

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1 conduct, very similar under 5104, and then finally, Count
2 Six, parading, demonstrating, or picketing. This is another
3 one where there's not a ton of case law that I was able to
4 find to help with that but just the plain meaning of those
5 words, I would submit we're looking for waving banners, we're
6 looking for participating in chants, we're looking, guy with
7 the horns on the bull horn, he would clearly qualify, but I
8 didn't see any footage where --

9 THE COURT: So if there are ten people, it's the
10 two with the banner that could be convicted under that
11 provision but not the eight who aren't holding the banner?

12 MR. BURNHAM: Not if they don't appear to be acting
13 in concert. If there's one guy with a banner and eight
14 people following along behind, certainly that's parading, but
15 if there's a guy with a banner over here and Mr. Brock is
16 just doing his own thing looking at his phone, taking
17 pictures, doing whatever, he's not answerable for the guy
18 with the banner unless there's some sort of concertive action
19 there would be our position.

20 Thank you, your Honor, ask for brief response if
21 appropriate. Thank you.

22 THE COURT: Thank you, Mr. Burnham. Let me hear
23 briefly from the Government.

24 MS. AYERS-PEREZ: Yes, your Honor. As to Count
25 One, the obstruction of the official proceeding, Brock was

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1 part of a mob that, and it was, we've heard from Agent
2 Glavey, we've heard from Captain Patton, it was that mob
3 breaching the Capitol that caused the official proceedings to
4 both recess, and I would point out that although the Senate
5 recessed at 2:12 --

6 THE COURT: Well, it wasn't the mob outside that
7 caused the recess, it was --

8 MS. AYERS-PEREZ: It was the breach.

9 THE COURT: -- when there was a breach.

10 MS. AYERS-PEREZ: Right. And Larry Brock is part
11 of a breach in the sense that he did breach the Capitol at
12 2:24 p.m. The House did not recess until 2:29 p.m. when
13 Brock had been inside the Capitol for five minutes at that
14 point. And there's also an aiding --

15 THE COURT: Is that what this turns on, my finding
16 the time that there was a recess by either the House or the
17 Senate --

18 MS. AYERS-PEREZ: I don't believe -- I'm sorry.

19 THE COURT: Let me finish.

20 -- and if Mr. Brock entered the Capitol before that
21 time, then the obstruction charge may survive, but if he
22 entered after that time, it cannot?

23 MS. AYERS-PEREZ: No, I don't believe so --

24 THE COURT: That's their argument basically.

25 MS. AYERS-PEREZ: I understand that. I think in

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1 this case that's just another thing that I'm pointing out to
2 your Honor, that the House didn't even recess until he'd been
3 inside the Capitol for five minutes. Even if that wasn't the
4 case, and it's the case here, but even if it wasn't, he's
5 part of this violent mob that's breached the Capitol
6 building. And under the aiding and abetting provision of
7 Count One, he's responsible for what's happening in this mob.
8 I understand that he entered 12 minutes after the initial
9 breach of the Senate Wing Doors, but he's still part of that
10 mob pushing through, and as we saw from that time lapse
11 video, this is a significant group of people with a
12 significant police line in front of them, between them and
13 the Capitol, and there's obviously just a huge ton of people
14 there, including Brock, and so it does take people time to
15 get through, and so yes, he's 12 minutes later, but he's
16 still responsible for what the mob did because he's part of a
17 mob. That's how a mob works. It exists because of the
18 numbers. And you know, we've heard from officers about how
19 outnumbered they were, well, that's because it's a mob. Not
20 everybody has the same role in that mob, not everybody's
21 smashing the glass with a flagpole, not everybody's holding a
22 sign, but those people can do that because the mob exists and
23 they provide them cover in the number of people and Brock is
24 a part of that. And he's responsible.

25 THE COURT: I'm surprised that this issue hasn't

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1 been addressed by some judge on this court over the past
2 couple of months, is this an unaddressed issue? Has this not
3 been argued in some other case that someone who just came in
4 isn't individually responsible for obstructing? Or to employ
5 Mr. Burnham's argument, if you came in after a recess of the
6 proceedings, then you can't be charged with obstructing the
7 proceedings.

8 MS. AYERS-PEREZ: And your Honor, this is a quote
9 from Judge Kollar-Kotelly and it's actually a metaphor about
10 the mob that, "Just as heavy rains cause flood in a field,
11 each individual raindrop itself contributes to that flood.
12 Only when all of the floodwaters subside is order restored to
13 the field. The same idea applies in these circumstances.
14 Many rioters collectively disrupted Congressional proceedings
15 and each individual rioter contributed to that disruption."
16 And in this case, the defendant's name is Rivera. "Because
17 Rivera's presence and conduct in part caused the continued
18 interruption of Congressional proceedings, this court
19 concludes that Rivera in fact impeded and disrupted the
20 orderly conduct of government business or official
21 functions." And I think that --

22 THE COURT: And how about the term "continued
23 disruption" meaning that it doesn't matter, I take it, from
24 Judge Kollar-Kotelly that the exact timing of one's conduct,
25 if it continued to interfere with Congress from completing

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1 its proceedings?

2 MS. AYERS-PEREZ: Right, your Honor. I mean this
3 is -- this is a continuous course of action that began from
4 the first or even before the first breach when the restricted
5 area was breached into the first breach of the Capitol until
6 they were finally able to clear them out as we've heard from
7 our witnesses, and begin the Congressional proceedings again
8 and that was late into the evening to the point where of
9 course they finished the next morning.

10 THE COURT: Okay.

11 MS. AYERS-PEREZ: And so that's in response to
12 defendant's argument as to Count One. Because of the aiding
13 and abetting provision and because of what we just discussed,
14 I do think we've reached the standard to get past this Rule
15 29 when it comes to Counts two and Three in the restricted
16 area. We've heard from Captain Patton, there were signs,
17 there was snow fencing, there were bike racks, and the
18 evidence we've seen of the defendant, there are people
19 climbing a scaffolding next to him when he enters through the
20 Senate Wing Doors, the windows are broken out. Even if, even
21 if, and I'm not conceding this but even if you believe that
22 he didn't see the glass, there are people climbing through
23 the windows next to him. When he enters in, there's not a
24 ton of people right there, but you can see people climbing in
25 the windows right next to him, and he knows that people are

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1 not supposed to be climbing in the windows next to him. When
2 he's next to the east Rotunda door before he picks up the
3 flex cuffs and heads up to the third floor where the Senate
4 Gallery is, there are officers standing in front of the door
5 trying to stop more people from coming in. There is a broken
6 window on that east Rotunda door that he's standing two feet
7 away from. He then turns around, grabs flex cuffs and walks
8 up the stairs to the Senate Gallery. He knows --

9 THE COURT: But we've merged two things here, we've
10 merged the building and the grounds.

11 MS. AYERS-PEREZ: Right.

12 THE COURT: Stay with grounds for just a second.

13 MS. AYERS-PEREZ: We've heard from Captain Patton
14 all of the signs that were along those grounds. We've seen
15 the actual signs there, and the bike rack, and the snow
16 fencing behind it, and he's part of the group that pushed
17 through all of these blockades around this perimeter that we
18 know were in place because Captain Patton walked the
19 perimeter that morning for the entirety of that perimeter.
20 And so he would have to walk past this stuff, even if a bike
21 rack is on the ground when he walks past it, it's still
22 there, you still see it, even if a sign is on the ground,
23 it's still there, it's still says area closed. These signs
24 weren't there every once in a while, they were there every
25 other bike rack, and he walked past those, he walked past

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1 every single one of those perimeters there on the west side.
2 He had to of to get to where he ended up.

3 THE COURT: All right, back to the building.

4 MS. AYERS-PEREZ: And back to the building, your
5 Honor, once inside, you're seeing people climb through a
6 window next to you on the left side and on the right side,
7 you're next to the east Rotunda doors which are broken out on
8 the window that's closest to the defendant, is broken, there
9 are multiple officers standing by the doors trying to stop
10 the mob from getting in, and he still continues on. At this
11 point he hasn't gone on the Senate floor yet, he ends up in
12 the Senate Gallery. Sergeant Timberlake tells us he's
13 involved in an altercation with other rioters. Larry Brock
14 saw this because he breaks it up, and he doesn't break it up
15 and leave, he breaks it up and then goes out onto the Senate
16 Gallery. He leaves there, he grabs a set of keys to try to
17 open the Senate floor doors, the doors say U.S. Senate on
18 them so he knows where he is. He's also been up above that,
19 so he's looking down and knows where he's at. He goes
20 directly down there to the Senate floor. We're getting into
21 Count Four -- or Count Four at that point. But there are
22 sign after sign after sign.

23 THE COURT: By the way, you've offered something
24 that I don't think is in evidence, at least I don't recall
25 it, which is what the items that he was using to try to open

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1 that door were. You just said he grabbed the Senate keys.

2 MS. AYERS-PEREZ: Or I said he grabbed some keys.

3 THE COURT: Is there evidence that says what it
4 was, where he got it?

5 MS. AYERS-PEREZ: We had a witness who said that
6 he -- it looked like a set of keys, we don't have the keys,
7 as Agent Moore testified they didn't find them there in the
8 execution of the search warrant, but we did have when the
9 witness --

10 THE COURT: Which witness, just so I can find it
11 again because I didn't recall that, which witness says that
12 it looked like the Senate keys?

13 MS. AYERS-PEREZ: It was Captain Patton.

14 THE COURT: All right, I'll check that.

15 MS. AYERS-PEREZ: That's as we were going through
16 the video footage with him. But yes, and at that point he's
17 trying to get into a locked door, it says U.S. Senate on it.
18 I mean there's sign after sign after sign that you're not
19 supposed to be inside this building, besides the obvious that
20 you're part of a mob that's overtaken a building. You
21 understand what a public building is, that you have to go
22 through security. He had no issue going through security
23 today, you understand that that's a process you go through.
24 He went through a broken door, with people climbing windows
25 next to him. He sees officers in multiple locations, either

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1 in altercations with rioters or trying to keep rioters out
2 and he continues his path through the Capitol on to the
3 Senate floor after seeing all of this. It's clear that this
4 is a restricted building and he's not supposed to be inside
5 of it. That's after going through all the signage on the
6 restricted grounds that he's not supposed to be on, and he
7 continues on throughout it.

8 THE COURT: All right. Go ahead.

9 MS. AYERS-PEREZ: And then when it comes to Count
10 Four and the Senate floor, first he's trying to get into a
11 locked door that says United States Senate on it, and then he
12 turns around and goes through another door and ends up there
13 in the Senate Chamber. He had previously, just about five
14 minutes prior, been in the Senate Gallery looking down
15 directly onto the Senate floor and goes directly down there,
16 as soon as he realizes what's below him and where he's at and
17 he has oriented himself with the Capitol, and he stays on the
18 Senate floor going through desks, walking through the Senate
19 floor for about eight minutes, I believe. It wasn't walking
20 in realizing, oh, no, and walking back out, no. He spent, he
21 spent a good chunk of time in there. And then once he was on
22 the Senate floor, he left the building, because that was his
23 intention in being there. So he knows that's the Senate
24 floor, he knows that he had tried to get into a locked door,
25 was unable to and goes around to another door that's

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1 unlocked, and then stays there for a period of time while
2 proclaiming this is an IO war and things of that nature. He
3 knows to the point that the President of the Senate is Vice
4 President Pence and where his chair is so he can tell other
5 rioters what it is they're sitting in or looking at. So this
6 isn't -- he didn't just stumble there and not understand
7 where he's at. Larry Brock knows exactly where he was.

8 And when it comes to the disorderly or disruptive
9 conduct, he and the rest of the mob disrupted the proceedings
10 that were happening there by being there, by marching
11 through. He was on the Senate floor where the proceeding was
12 supposed to be taking place, and wasn't, because they were in
13 the building, not just on the Senate floor, and then he's
14 standing there where it's supposed to be happening.

15 THE COURT: Well, so here's my question on that.
16 There are two different charges, one is entering and
17 remaining on the floor of Congress, or entering or remaining
18 in a restricted building and grounds, and the other is
19 disorderly or disruptive conduct in restricted building or
20 grounds or in a Capitol building, those are four of the
21 counts, two for each. What's the difference between the
22 disorderly conduct counts and the entering counts? Is anyone
23 who entered the Capitol building also guilty of disorderly or
24 disruptive conduct on that date in the Capitol building?

25 MS. AYERS-PEREZ: When you enter as part of a

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1 violent mob, then yes.

2 THE COURT: So your answer is yes, everyone who
3 entered the Capitol on that date is guilty not just of
4 entering but also of disorderly or disruptive conduct in the
5 building.

6 MS. AYERS-PEREZ: The mere, and we've heard this
7 from our witnesses, the mere fact that the Capitol was
8 breached and people were inside is what disrupted the
9 proceeding, and part of the disruptive definition is that it
10 disrupts the orderly course of business or official business.
11 And in this case, it disrupted the counting of the Electoral
12 College votes. Certainly the way Larry Brock entered with
13 the violent mob of people and the way he went through the
14 Capitol building certainly disrupted the proceedings and to
15 add to that, of course he's standing where the proceedings
16 were supposed to be taking place. So certainly with Larry
17 Brock, he would have violated both the entering and the
18 disruptive conduct as he's inside which is as part of this
19 mob that's stopped the official proceeding.

20 THE COURT: So just -- so someone who entered let's
21 say not when Mr. Brock entered but 15 minutes later, at 2:39,
22 and came in and was there for about 90 seconds, looked
23 around, then said to him or herself, Jeez, maybe I shouldn't
24 be here and turned around and walked out, in your view, they
25 would be guilty not just on the entering concept, but also on

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1 the disorderly or disruptive conduct because of what was
2 happening around them by the rest of the mob?

3 MS. AYERS-PEREZ: In -- every case is different,
4 there are facts and circumstances for every case, I don't
5 want to tie the Government to --

6 THE COURT: But judges like to ask hypotheticals of
7 counsel and I'm asking you that hypothetical.

8 MS. AYERS-PEREZ: Yes, your Honor. And I would
9 believe in that case, yes, that he would be responsible for
10 disruptive conduct within the building.

11 THE COURT: Which I think is returning to the point
12 that no one who entered the Capitol on that date is not
13 guilty of the disorderly and disruptive charges as well as
14 the entering and remaining charges.

15 MS. AYERS-PEREZ: For people who entered the
16 Capitol on that date, just the mere entrance of the mob
17 caused the disruption, so if you're part of the mob, you're
18 part of that disruptive conduct. And not just entering, but
19 also then disrupting the proceeding that took place because
20 it wasn't just one person, it was everybody, and you're a
21 part of everybody.

22 THE COURT: And do you think the evidence shows
23 that Mr. Brock was unreasonably loud or disruptive or
24 interfered with another person by jostling against or
25 unnecessarily crowding that person?

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1 MS. AYERS-PEREZ: He was part of a crowd and group
2 that's going through the Capitol, went through about every
3 area you could get through, he's screaming on the Senate
4 floor, he's screaming in the Senate Gallery.

5 THE COURT: He's screaming?

6 MS. AYERS-PEREZ: He's yelling at other rioters and
7 in the Senate Gallery he's yelling at them about not to --
8 not to damage anything and on the Senate floor he starts by
9 saying this is our house, he then says that this is an IO
10 war, to get out of the Vice President's chair but he's --

11 THE COURT: So two out of the three things you just
12 said were basically telling other rioters not to do bad
13 things.

14 MS. AYERS-PEREZ: It's true, but he's still causing
15 a disruption as he does it. And we've already seen from his
16 Facebook post why he's telling them that.

17 THE COURT: Yeah, my guess is that the language,
18 the definitional language for disorderly conduct, the
19 unreasonably loud and disruptive was written having in mind
20 someone who was doing something during a Congressional
21 proceeding and interfering with that Congressional
22 proceeding, but I understand your argument.

23 MS. AYERS-PEREZ: Yes, your Honor, and I think, I
24 think I've responded to all of the defendant's points on
25 Counts One through Six, or the entirety of the indictment.

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1 THE COURT: All right. Mr. Burnham, anything you
2 want to say in response?

3 MR. BURNHAM: Yes, just a few specific things. As
4 to Count One, certainly other judges, you know, have denied
5 motions similar to mine to Count One but there's absolutely
6 no controlling authority on that question and I think it's
7 only natural with the unorthodox use of heretofore kind of a
8 sleepy statute, that the members of this court might come
9 down differently. And I have great difficulties with the
10 reasoning of, well, there was a mob, and whoever joined the
11 mob is answerable for all of the consequences that ensued
12 when evidence in this case even shows this "mob" was composed
13 of discrete groups of people doing very discrete types of
14 things. There was everything from out-and-out miscreants
15 behaving abominably to people who seemed to be befuddled and
16 a little confused by their situation. So I think the
17 reasoning of, well, there was a mob, and he was in the mob so
18 he's answerable is overly simplistic and not the intent of
19 the statute.

20 THE COURT: But that may be right although the
21 response, it would seem to me, is that the mob had at least
22 seemed to have a common purpose, and that was to prevent the
23 certification of the election, to interfere with that
24 process, and they took a common action to try to accomplish
25 that, which was entering the Capitol grounds and then

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1 entering the Capitol building.

2 MR. BURNHAM: I don't agree at all, your Honor, I
3 think you could see even in the evidence in this case, try to
4 put out of our minds everything else, we know there was a
5 disparity of purposes. There were people who were just
6 trashing things that I suppose were just interfering --

7 THE COURT: That doesn't speak to their purpose,
8 because their purpose wasn't to trash things, their purpose
9 was to stop a proceeding and they were trashing in order --
10 along the way to accomplish that.

11 MR. BURNHAM: But there was another group of people
12 of whom Mr. Brock was a member that wanted the proceeding to
13 function effectively and to achieve the right result.
14 Mr. Brock wanted the Electoral College proceeding to proceed,
15 he was in support of that. The Government's witnesses all
16 testified there's a process for making objections, they're
17 debated, and slates of electors can be rejected. Some people
18 thought it could be sent back to the states and Mr. Brock and
19 many others manifestly were supporting that process. They
20 were there to support the Senators, the Congressmen making
21 those objections and they wanted an ultimate legal result of,
22 in many cases, rejecting the purported Biden victory in favor
23 of at least investigating the fraud. So they were there
24 supporting the Electoral College. So I distinguish those
25 people from the riffraff, breaking things, acting crazy, you

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1 know, fighting with law enforcement, who knows what was in
2 their minds but those people were criminals. There was
3 another group of people that was not that at all, at all.
4 And that's why I think that, well, was he in the mob is not
5 the right analytical framework at all for Count One.

6 Technical point, but I would argue that once the
7 Senate, Mr. Brock is charged with obstructing the Electoral
8 College and I guess the House proceeded a little farther but
9 once the Senate adjourned, it's not the Electoral College
10 anymore, it's just the House by itself which is a different
11 proceeding, not charged in this case. It's undisputed that
12 the Electoral College ceased to function prior to Mr. Brock's
13 entry, I think that's an important point.

14 And that's sort of the same arguments I'm making if
15 the Government -- the Government hasn't exactly elected a
16 theory as to Count One, whether it's aiding or abetting or
17 whether it's not but to the extent it is relying on aiding
18 and abetting and Ms. Ayers-Perez did use that term, they have
19 to show that Mr. Brock's intent was to assist, I forget the
20 exact terminology but to assist, encourage, you know, all the
21 terms the statute uses, Section 2, the individuals who were
22 responsible for obstructing the proceeding, again, as
23 distinct from encouraging the proceedings to arrive at what
24 they viewed as the correct results. And the witnesses even
25 added support to this, the Government's witnesses testify, we

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1 heard people breaking the windows so we adjourned. People
2 were smashing the doors so we adjourned. In order to convict
3 on an aiding-and-abetting theory, there needs to be evidence
4 to find that Mr. Brock supported that, which is what
5 triggered the adjournment and we don't have evidence of that.

6 As to the -- as to the restricted area, I basically
7 gave the Government in the opening, point to some evidence
8 that shows him being put on notice of the restriction and
9 they pointed to I guess three things the way I understood the
10 argument. One is the people climbing the scaffold, which is
11 the restriction has to come from the persons lawfully in
12 charge of the property, and people climbing a scaffold don't
13 indicate any intention one way or the other on the part of
14 the people lawfully in charge of the premises, there's just
15 some knuckleheads climbing a scaffold, you'd find that at a
16 football game, a rock concert, any large gathering of people
17 there's going to be some knuckleheads so that doesn't
18 communicate anything one way or the other.

19 The window, there's been arguments from the
20 Government that Mr. Brock was put on notice from people
21 jumping through the window and I'd urge the court to go back
22 and take another look at the video. There are a couple of
23 people that come in through the window which would have been
24 on Mr. Brock's left, I think there was two, maybe three, but
25 if the court reviews the video or perhaps recalls better than

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1 I do, there's a piece of the wall there, it's like a piece
2 that sticks out that would have obscured the view from where
3 Mr. Brock was entering to that window, and so that combined
4 with the fact that Mr. Brock doesn't look to his left,
5 doesn't allow the court to find that the --

6 THE COURT: Don't you think it would require me to
7 blink reality to conclude that Mr. Brock in the few moments
8 before he actually entered the building and as he was
9 entering the building didn't see anyone going through the
10 windows? That sounds pretty amazing for you to suggest that
11 that would be the case.

12 MR. BURNHAM: I don't think it's amazing at all
13 because we saw that by that point the door was open, there
14 was no need to go --

15 THE COURT: We also see people still coming through
16 the windows.

17 MR. BURNHAM: I think it was approximately two out
18 of maybe 30 that entered during that --

19 THE COURT: You say two while he was immediately
20 walking through?

21 MR. BURNHAM: That's right.

22 THE COURT: That doesn't mean while he was
23 approaching that there weren't others, indeed I think there
24 were others because we've seen some video before he actually
25 came through the door.

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1 MR. BURNHAM: When the windows are actually being
2 broken, certainly we did but by the time Mr. Brock arrived on
3 the scene, the door was open so the reasonable finding would
4 be that most of the people are just going to walk through the
5 door because there's no reason to go through the window at
6 that point.

7 THE COURT: But there were people coming through
8 the windows.

9 MR. BURNHAM: I think there were two, for whatever
10 reason, they went through the window, I don't know, but the
11 vast majority of people at that point were going through the
12 door and only stands to reason that that's what most people
13 would do with the exception of, again, the few just
14 miscreants that were just misbehaving for its own sake but
15 that would have been very few of number, and there's no
16 evidence Mr. Brock would have been on notice of because it
17 would have been, as he's walking through unless he looked
18 over and watched it, would have been indistinguishable
19 someone coming through the window and then someone that was
20 just walking from that part of the hallway, he wouldn't have
21 known the difference.

22 THE COURT: I'm talking about the moments before he
23 reached the door and came through. He must have seen people
24 going through the windows then.

25 MR. BURNHAM: Well, there's no evidence of that and

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1 I would argue that there's not even an inference of Rule 29
2 that he would have had to have seen that. I think if there's
3 any inference it would have been that few people would have
4 gone that way, and he seemed pretty intent on looking ahead
5 at the time, at least when he comes on the video and wouldn't
6 have been in a position --

7 THE COURT: I'll have to look at the video again to
8 see whether it only captures Mr. Brock coming through the
9 door or whether it also captures moments before he came
10 through the door and whether there were people coming through
11 the windows at that time.

12 MR. BURNHAM: Thank you, your Honor. And final
13 point the Government raised is the situation at the Rotunda
14 doors and the first observation there is this is a triple
15 fallback position, I guess the argument is that if the
16 grounds weren't legally restricted and the outside of the
17 building was, perhaps he was then on notice well after
18 entering, but even there, you don't have those officers
19 communicating to him that he wasn't allowed to be there.
20 There was some seemingly crazy people outside the door
21 banging which only makes sense that the police weren't going
22 to let those guys in because they were acting crazy, didn't
23 communicate anything to Mr. Brock and with respect to the
24 remainder, I'd rest on my initial arguments.

25 THE COURT: All right, thank you, Mr. Burnham. And

1 those are the arguments that are good food for thought but
2 I'm going to keep them as thought. I'm going to reserve a
3 decision on the motion consistent with Rule 29(b) and let the
4 remainder of the evidence in the case come in. And I'll rule
5 after that, before I, or in conjunction with, if necessary,
6 any ruling on the defendant's guilt as to the various
7 charges. But at this point, I'll reserve a decision on the
8 Rule 29 motion as Rule 29(b) permits.

9 So we're going to break for lunch now, and I'll
10 give you time to think further, Mr. Burnham, and Mr. Brock,
11 but we'll resume at -- oh, let's make it 1:50, and we'll
12 proceed with a decision from the defendant with respect to
13 its case, and what lies thereafter. Okay. Anything else we
14 need to talk about before you have your lunch break?

15 MS. AYERS-PEREZ: Nothing from the Government.

16 MR. BURNHAM: No, your Honor.

17 THE COURT: All right. Thank you, all.

18 (Luncheon recess, 12:45 p.m. to 1:53 p.m.)

19 THE COURT: All right. Welcome back, everyone, and
20 turn to you, Mr. Burnham, for the defense case.

21 MR. BURNHAM: Thank you, your Honor. I'll approach
22 the podium.

23 THE COURT: Use whichever mic you want.

24 MR. BURNHAM: I'd like to move in the exhibits
25 previously identified, that's Exhibit 3, Defense Exhibit 3

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1 was a photo that --

2 THE COURT: I haven't seen -- well, it may be in
3 the book, is it in your book?

4 MR. BURNHAM: Yes, it is, under those tabs, tab 3
5 is the photo, that's identified by Agent Moore, I'll go ahead
6 and ask the court to receive it now.

7 THE COURT: All right. Any objection to moving
8 Defense Exhibit 3 into evidence?

9 MS. AYERS-PEREZ: No objection, your Honor.

10 THE COURT: All right. And I will include with
11 your representation, Mr. Burnham, that the date of the photo
12 is February 7th, 2020.

13 MS. AYERS-PEREZ: Yes, your Honor.

14 THE COURT: So Defense Exhibit 3 is admitted.

15 MR. BURNHAM: And then the other exhibit is Defense
16 Exhibit 5, under tab 5, which was the article that, you know,
17 I had the agent review but the basis for why that's
18 admissible is the second paragraph is the agent testified is
19 a quote and now that I've recovered the number, it matches up
20 pretty much word for word, I think word for word with
21 Government's 913, and so, you know, the odds of that being a
22 coincidence are vanishingly small so we would offer that as
23 proper authentication with that exhibit combined with the
24 agent's testimony.

25 THE COURT: All right, that's the representation

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1 made with respect to admissibility of the article and it
2 would be admitted only for that purpose, to show that a
3 quoted portion of Government Exhibit 913 is the same as a
4 paragraph of Exhibit 5. Defense Exhibit 5. Any objection?

5 MS. AYERS-PEREZ: I have no objection to that
6 limited purpose, your Honor.

7 THE COURT: All right. And it will be admitted for
8 that purpose. That is Defense Exhibit 5.

9 MR. BURNHAM: And with that, we rest. If your
10 Honor needs to do a colloquy with Mr. Brock, he's prepared
11 but if not --

12 THE COURT: Yes, I would like, would you like to
13 ask him anything, or want me to do the colloquy?

14 MR. BURNHAM: However the court's norm -- I can
15 represent our discussions.

16 THE COURT: I usually do the colloquy so I will do
17 that so I'll just ask Mr. Brock to come up to the microphone,
18 you can stay there with him, Mr. Burnham. Good afternoon,
19 Mr. Brock.

20 THE DEFENDANT: Yes.

21 THE COURT: The -- your counsel has indicated that
22 the defense is resting, which would mean that you have
23 decided not to testify, and I just wanted to confirm that
24 that is your free and voluntary choice and so I will ask you,
25 have you consulted with Mr. Burnham about whether you should

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1 or should not testify in this matter?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you taken into account his
4 advice to you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And is it your decision that you will
7 not testify in this case, which is Criminal Case 21-140 in
8 this court?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And that is a decision made
11 by you upon advice of counsel, but freely, voluntarily, and
12 intelligently?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Thank you.

15 MR. BURNHAM: Thank you, your Honor.

16 THE COURT: With that, the record is complete. And
17 now the only thing I have yet to receive from you all is
18 argument. And we're about 2:00 in the afternoon, I'm
19 prepared to give you a little time if you want a little time
20 to compose your thoughts and so I can give you half an hour,
21 45 minutes, and then we can come back for argument. Would
22 that be your request and in your interest?

23 MS. AYERS-PEREZ: Yes, your Honor.

24 THE COURT: One yes. Mr. Burnham?

25 MR. BURNHAM: Yes, your Honor.

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1 THE COURT: All right. And now --

2 MR. BURNHAM: Yes, your Honor.

3 THE COURT: And now timing, how long would the
4 Government expect to need?

5 MS. AYERS-PEREZ: I think 45 minutes is fine, your
6 Honor.

7 THE COURT: That's 45 minutes total?

8 MS. AYERS-PEREZ: Yes, your Honor, I think that
9 would take us to about 2:40 -- oh, I'm sorry, I'm sorry, I
10 was not on the same page, I'm so sorry. No, I would need at
11 max 30 minutes total, so probably 20 and 10.

12 THE COURT: And Mr. Burnham?

13 MR. BURNHAM: I'll ask for 30 minutes, it might be
14 a little under that.

15 THE COURT: So 30 minutes or so. So we'll resume
16 at -- I'll give you the full 45 minutes, resume at 2:45 and
17 hear argument at that time. And once I hear argument, I will
18 either rule then or it's possible that I will decide to bring
19 you back first thing in the morning to rule. We'll see how
20 things go with respect to your arguments, how convincing they
21 are on each side. All right? See you in 45 minutes. Thank
22 you.

23 (Court in recess, 1:59 p.m. to 2:49 p.m.)

24 THE COURT: All right. Anything before we start
25 with the arguments?

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1 MS. AYERS-PEREZ: Not for the Government, your
2 Honor.

3 MR. BURNHAM: No, your Honor.

4 THE COURT: Fine. Ms. Ayers-Perez, we'll start
5 with the Government.

6 MS. AYERS-PEREZ: Thank you, your Honor. Your
7 Honor, in the days and weeks leading up to January 6th, 2021,
8 the defendant ... I apologize.

9 THE COURT: That's quite all right. Your gesturing
10 was quite amusing.

11 MS. AYERS-PEREZ: In the days and weeks leading up
12 to January 6th, 2021, Larry Brock was obsessed with the
13 election. He was saying things such as, "Biden won't be
14 inaugurated and we will ensure that on the 6th." Things such
15 as, "the Supreme Court is staying out of it. Those are the
16 last two peaceful options." Talking about, "Congress can
17 stop it on the 6th of January." Saying things such as, "Help
18 is on the way, 6 January #MAGA #Stormthecastle." On
19 July 5th, "our second American Revolution begins in less than
20 two days."

21 THE COURT: It's January 5th, not July, right?

22 MS. AYERS-PEREZ: January 5th, your Honor, thank
23 you. And then in December, "I prefer outright Insurrection
24 at this point." He prepared for January 6th, he bought
25 tactical gear, he bought a helmet, and he showed up there and

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1 the first thing he did is he went to the Stop the Steal Rally
2 with so many others.

3 And then he began his march to the Capitol. He
4 marched down Constitution Avenue, we can see him here,
5 wearing his combat vest, wearing his jacket, and he enters
6 into the restricted area. We heard from Captain Patton what
7 that restricted area looked like. He personally walked it
8 that morning. Signs every other bike rack, area closed by
9 Capitol Police. Bike rack all around, snow fencing, all
10 around, and Larry Brock walked through all of this, with
11 everybody else, and he walks up --

12 THE COURT: Is there any evidence as to whether all
13 of that was in place or not in place when Mr. Brock entered
14 that area?

15 MS. AYERS-PEREZ: Well, Captain Patton saw it that
16 morning and I haven't heard any evidence that Mr. Brock
17 didn't see it that day. Here we are next to the scaffolding
18 on the west side of the Capitol. We've heard from Captain
19 Patton, we're already in the restricted area at that point.
20 People are climbing scaffolding outside the United States
21 Capitol building, and there's Larry Brock. Helmet on, part
22 of the group, part of the mob, making his way towards the
23 Capitol building. And at 2:24 p.m., he enters into the
24 Capitol building. You see the broken windows next to him,
25 people have entered through those windows, he's walking into

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1 the Capitol building a mere 12 minutes after the initial
2 breach on the west side of the Capitol.

3 THE COURT: That's a still photo from a video.

4 MS. AYERS-PEREZ: It is, your Honor, yes.

5 THE COURT: I haven't gone back and looked at the
6 video, I will. Does the Government represent whether the
7 video shows the time before Mr. Brock entering?

8 MS. AYERS-PEREZ: I'm not sure, I don't believe it
9 shows too much time before he enters. I can tell you this
10 window here on the right side of the screen, there is
11 somebody who does climb through that window in close
12 proximity to when Larry Brock enters into the Capitol
13 building.

14 THE COURT: Well, I guess I'll look at the video.

15 MS. AYERS-PEREZ: Larry Brock then ends up outside
16 the Rotunda at 2:35 p.m., and these are those east Rotunda
17 doors, right outside the Rotunda after Larry Brock has
18 already gone into the area marked Speaker of the House, Nancy
19 Pelosi, and here is Larry Brock. Mere feet from that east
20 Rotunda door. And what you'll notice about that door is the
21 window has already been smashed out. And there are law
22 enforcement, Capitol Police right there and right there
23 (indicating). Despite all of this, despite Larry Brock being
24 within feet of all of this, he continues on his mission
25 throughout the Capitol Building. He grabs flex cuffs off the

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1 ground and proceeds to head upstairs to the third floor.

2 Here he is going down the corridor one minute later
3 towards the Senate Gallery. And here he is two minutes later
4 outside the Senate Gallery, and this is where Sergeant
5 Timberlake talked about. As he's trying desperately to close
6 these gallery doors, he's been assaulted by Capitol rioters,
7 not by Larry Brock. Larry Brock stops the assault per
8 Sergeant Timberlake, calms things down. To calm it down
9 means that Larry Brock saw it. He saw Sergeant Timberlake
10 assaulted by fellow rioters and he continues on again.

11 And we see this post. The conversation Larry Brock
12 is having with Beaf Supreame. "A possible IO loss if a cop
13 got hurt." And Brock, "look dude, I am pretty sure I am
14 ready to go at it. I just need numbers with me." This is
15 the mindset that Larry Brock had that day, and I --

16 THE COURT: Wait a minute, wait a minute, Beaf
17 Supreame is saying, it would be bad if a cop got hurt.

18 MS. AYERS-PEREZ: Yes, yes.

19 THE COURT: And Mr. Brock is responding that he's
20 ready to go at it. He just needs numbers.

21 MS. AYERS-PEREZ: Right. He's ready to go at it
22 that day, and then what you see is that Larry Brock stops a
23 cop from being hurt that day, Sergeant Timberlake. And what
24 we will see in a few minutes is when Larry Brock is on the
25 Senate floor, he's still talking about that IO war. He's

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1 stopping, the reason that Sergeant Timberlake is being
2 stopped from being assaulted by Larry Brock and why Larry
3 Brock is trying to defuse a situation, calm it down, is
4 because he's worried about this IO loss. This IO war is at
5 the front of Larry Brock's thought process that day, which we
6 hear when he gets on the Senate floor.

7 Just one minute later, here he is on the Senate
8 balcony, and you'll notice that here he is shouting at fellow
9 rioters and they're turning and looking at him. He has a
10 commanding presence. He's making his voice heard. He's
11 telling them, do not destroy anything and they're listening.
12 People around him.

13 THE COURT: We would all prefer that he's saying
14 that rather than the opposite, don't we?

15 MS. AYERS-PEREZ: I prefer he wasn't at the Capitol
16 that day.

17 THE COURT: Different issue, different issue.

18 MS. AYERS-PEREZ: But yes, it is great that he said
19 that. But the fact that his actions then take him down onto
20 the Senate floor is different than if he had said that and
21 left.

22 And then four minutes later, he goes directly
23 downstairs to the second floor. He knows where he is now.
24 He has oriented himself because he was there in the gallery
25 and understands that the Senate floor is below him. And here

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1 he is at the door, we heard from Captain Patton it looked
2 like he had a set of keys in his hand, and that door says
3 United States Senate on it. And we know that door 21 minutes
4 earlier had Vice President Michael Pence leaving from that
5 door, just 21 minutes prior to Larry Brock standing outside
6 trying to get inside. And we heard from Captain Patton, what
7 that door leads to. It leads to the Senate floor and it
8 leads to Vice President Pence's ceremonial office.

9 THE COURT: It's not really that important what's
10 behind that door because there's no evidence that Mr. Brock
11 knew what was behind that door.

12 MS. AYERS-PEREZ: Well, the door says United States
13 Senate on it.

14 THE COURT: That's right. It is obviously a closed
15 locked door giving access to some part of United States
16 Senate.

17 MS. AYERS-PEREZ: It is.

18 THE COURT: The fact that the Vice President came
19 through it 20 minutes earlier is dramatic, but it doesn't
20 seem to me to be that significant because Mr. Brock didn't
21 know that. There's no evidence that he knew that.

22 MS. AYERS-PEREZ: Right. But Mr. Brock has found
23 himself in an area that's extremely sensitive, so much so
24 that the Vice President had just come out of there 21 minutes
25 prior and he's trying to get into a locked door inside a

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1 building he was never supposed to be in in the first place.

2 And just two minutes later, here he is on the
3 Senate floor, and you'll see in his left hand, he now has his
4 flex cuffs out. The interesting thing about those flex cuffs
5 is that Sergeant Timberlake never saw them, and he was right
6 next to Larry Brock and he never saw the flex cuffs. When
7 Larry Brock is right next to Sergeant Timberlake he doesn't
8 have them displayed, he doesn't hand them to an officer to
9 get rid of them, he has them wherever he has them, we don't
10 know, but now he's brought them out again, now that he's on
11 the Senate floor. And once again, we find Larry Brock in the
12 Senate Chamber shouting at fellow rioters saying things such
13 as get out of the Vice President's chair. This is our house.
14 This is an IO war. We can't lose the IO war.

15 And he's back to his mindset that led up to all of
16 this, which is the IO war, which is what we see message after
17 message after message on Facebook that Larry Brock has in the
18 days and weeks leading up to January 6th. We saw the
19 progression of furor from Larry Brock, first in November,
20 that Donald Trump had lost the election, in December, so he
21 has convinced himself the Supreme Court will handle the loss,
22 that Donald Trump will still be President, and now his final
23 piece is January 6th and Congress and now he's on the floor
24 of the Senate where just less than an hour before, they had
25 been debating Arizona and the objection to Arizona, the Vice

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1 President had been in his chair, and now Larry Brock is in
2 combat gear standing on the floor of the Senate. He's
3 walking around not just in the middle of the Senate, you can
4 see him here in the back walking around the desks there in
5 the Senate.

6 THE COURT: Now those keys that you referenced a
7 moment ago at that door, we don't know where those keys came
8 from.

9 MS. AYERS-PEREZ: We don't, as Agent Moore
10 testified, they didn't find them when they executed that
11 search warrant, we have no idea where those keys came from,
12 where he got them from, what they were to.

13 THE COURT: Does that matter?

14 MS. AYERS-PEREZ: It matters in the sense that we
15 would like to know what those keys are to if they're
16 actually --

17 THE COURT: We would like to know but it doesn't
18 matter in terms of his culpability on any of the charges?

19 MS. AYERS-PEREZ: It matters in the sense that he
20 was deep inside the Capitol in a very sensitive area and he
21 at some point, whether inside the Capitol or before he got to
22 the Capitol, had found a set of keys that it appeared he
23 believed could open the door to the Senate Chamber, and you
24 know it's the Senate because it says so on the door. And
25 so --

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1 THE COURT: I'm not sure you're understanding my
2 question. My question is this: If A, he brought the keys
3 with him; or B, he found the keys on the table outside the
4 door and they were unlabeled; or C, he found the keys there,
5 and they were labeled Senate keys, is there a different
6 result from those three possibilities or is the result at the
7 end of the day the same?

8 MS. AYERS-PEREZ: Well, the result is the same
9 because he didn't get in through the keys, but him even
10 trying with the keys, whether or not they were A, B, or C,
11 whichever way he obtained the keys, goes to his corrupt
12 intent and his unlawful intent that day to get onto the floor
13 of the Senate where the official proceeding was taking place.

14 THE COURT: I think you're saying it doesn't matter
15 because whether it's A, B, or C, it's still corrupt intent.

16 MS. AYERS-PEREZ: It is. And we --

17 THE COURT: That's your answer to my question, I
18 think.

19 MS. AYERS-PEREZ: Yes, your Honor. It is still
20 corrupt intent, whether it's A, B, or C, the fact that he's
21 using the keys, obtained however he obtained them, is showing
22 his corrupt intent that day and his unlawful intent to get to
23 the heart of the Capitol to get onto the Senate floor, where
24 the official proceeding that's the basis for Count One of the
25 indictment was in the process of taking place. The objection

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1 to Arizona was being debated in the Senate at that moment in
2 time. So it does go to his corrupt intent that day.

3 And we see his corrupt intent throughout the course
4 of this. We see it beginning in his Facebook posts, leading
5 up to January 6th, as he gets more and more angry and his
6 rhetoric gets more and more intense. When he says things
7 such as storm the castle, when he says things such as that
8 the American Revolution begins in less than two days, on
9 January 5th, that's showing his intent on what he's going to
10 do when he gets to Washington, D.C. on January 6th.

11 What is so unique about Larry Brock is that he
12 doesn't talk very much about going to the Stop the Steal
13 Rally, that wasn't his purpose behind being in Washington,
14 D.C. on January 6th. His conversations leading up to
15 January 6th are about Congress. They're about the vote,
16 they're about January 6th itself. And he is acutely aware of
17 what is happening inside that Capitol building on
18 January 6th. It's not just the end result of a Stop the
19 Steal Rally that he attends, it is the Capitol and Congress
20 that is the reason why he's there in the first place. He
21 very, very infrequently talks about the Stop the Steal Rally.
22 It's Congress, it's the counting of the Electoral College
23 votes, it's the peaceful transfer of power on January 6th
24 that brought Larry Brock to Washington, D.C., in combat gear
25 at that.

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1 THE COURT: One could read the evidence, I'm not
2 saying that I do, but one could read the evidence in a way
3 that supports the conclusion that Mr. Brock wanted to stop
4 the inauguration, because that's referenced a couple of
5 times, as opposed to specifically stopping the certification
6 of the election. Why shouldn't the evidence be read that
7 way? And would that matter?

8 MS. AYERS-PEREZ: He wasn't there on January 20th,
9 he was there on January 6th, and one way to stop the
10 inauguration of a new President is to be there on January 6th
11 and stop the peaceful transfer of power. It's that day that
12 he bought plane tickets for to go to Washington, D.C. He
13 didn't buy plane tickets to go to Washington, D.C. on
14 January 19th to stop the eventual inauguration on
15 January 20th.

16 THE COURT: Is there anything in the evidence --
17 there are a lot of references to January 6th, and some of
18 those references, not many of them but some of them might
19 have been tagged to the Stop the Steal Rally on January 6th,
20 is there any evidence in any of his communications
21 beforehand, the Facebook communications mainly, that he
22 intended to go to the Capitol on January 6th?

23 MS. AYERS-PEREZ: He talks multiple times about
24 Congress on January 6th, and Congress is there inside the
25 Capitol building, and he ends up there at the Capitol

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1 building.

2 THE COURT: I know where he wound up, but is there
3 anything that actually says, that indicates there are things
4 that indicate I'm going to the Stop the Steal Rally, is there
5 anything that indicates I'm going to the Capitol?

6 MS. AYERS-PEREZ: It's not, there's nothing in
7 there that says I'm going to the Capitol. There are a number
8 of messages that says Congress on January 6th and what
9 Congress is doing on January 6th. Larry Brock is a smart
10 guy, he's a graduate of the United States Air Force Academy,
11 former lieutenant colonel in the Air Force, he understands
12 where Congress is and he understands what's happening on
13 January 6th, in Congress, and I think he's made his knowledge
14 of what's happening on January 6th and Congress' role in
15 that, he discusses that plenty of times throughout his
16 messages leading up to January 6th, and he very infrequently
17 discusses the actual rally that Donald Trump is having that
18 day, and prior to going to the Capitol.

19 THE COURT: Okay.

20 MS. AYERS-PEREZ: And all of this leads to this
21 chilling post on December 24th that reads as a military
22 operation that Larry Brock sends in a private message to a
23 fellow military man where he lists what he wants to happen if
24 Congress fails to act on January 6th, and it is egregious and
25 severe, but it also shows just how strongly Larry Brock feels

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1 about January 6th and that January 6th is the end point for
2 him. Not the inauguration, it's January 6th, and what's
3 happening in Congress at the Capitol that is the end point
4 for Larry Brock. Thank you, your Honor.

5 THE COURT: Well, wait a minute. I have a question
6 or two. So if I decide that there has to be something more
7 than just being in the Capitol in order to find disorderly or
8 disruptive conduct, what evidence would you point me to that
9 is more than just being in the Capitol?

10 MS. AYERS-PEREZ: Well, the disruptive conduct was
11 disrupting the proceeding, or any course of business that
12 day, and more than just being in the Capitol, he is
13 throughout the Capitol. He starts on the first floor, second
14 floor, third floor, Rotunda, east Rotunda stairs, Senate Wing
15 Doors, Senate Gallery, Senate floor, Parliamentary doors,
16 he makes quite a bit of headway and goes through the Capitol
17 a lot. He didn't walk in -- and I know your Honor had the
18 hypothetical earlier of somebody walking in and walking out
19 almost immediately. He spent about 38 minutes inside the
20 Capitol, but during that time, he went on to the Senate
21 floor, where less than an hour before, they're debating
22 Arizona on the Senate floor, where he is now at and they
23 can't continue their order of business, the normal
24 proceedings because not just people are inside the Capitol of
25 course, but he's not leaving immediately like you said, he is

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1 going through the Capitol for a lengthy period of time and
2 he's going to one of the most sensitive areas within a
3 sensitive building within the United States.

4 THE COURT: So you would point to the duration and
5 scope of his time in the Capitol?

6 MS. AYERS-PEREZ: Duration and scope and, yes, and
7 the location, yes, as part of his subset of scope.

8 THE COURT: What about in the last charge, the
9 parading, picketing, demonstrating, which of those do you
10 assert Mr. Brock engaged in?

11 MS. AYERS-PEREZ: The demonstrating, as part of a
12 group that's demonstrating throughout as somebody who's
13 shouting commands and as part of a group in the Senate
14 Gallery.

15 THE COURT: So not picketing.

16 MS. AYERS-PEREZ: Picketed, too, he really did. I
17 mean Larry Brock's conduct on January 6th covers a wide range
18 of conduct. I think demonstrating is the one that most
19 closely fits, but it doesn't mean the others don't fit.

20 THE COURT: So the only one of those three terms
21 that's defined, specially defined for purposes of the
22 provisions is demonstrate, which is defined as conduct that
23 would disrupt the orderly business of Congress by, for
24 example, impeding or obstructing passageways, hearings or
25 meetings but does not include activities such as quiet

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1 praying, and so with that definition of demonstrate, what is
2 it you feel that he did that constitutes demonstrating?

3 MS. AYERS-PEREZ: Merely being inside the Capitol
4 and going throughout the Capitol, especially with the scope
5 of what he did, it disrupted the order of Congress and what
6 Congress is doing, but in addition to that, going inside the
7 Senate Chamber twice, once at the gallery, once on the Senate
8 floor, absolutely disrupted normal course of Congress because
9 he's inside the chamber where Congress is supposed to be
10 convened at that moment in time.

11 THE COURT: Well, is it odd that someone going into
12 the chamber who wasn't a Senator or a staff person for the
13 Senator or into the gallery, unless they do something more,
14 probably would not be disrupting the orderly business of
15 Congress, but someone going in when Congress isn't even there
16 would be disrupting the orderly business of Congress? It
17 seems a little odd.

18 MS. AYERS-PEREZ: Well, I take it from the first
19 example that that's somebody who's already lawfully inside
20 the building. Larry Brock and the --

21 THE COURT: That's my hypothetical, yes.

22 MS. AYERS-PEREZ: -- and the fellow rioters are not
23 lawfully inside the building. We've heard from multiple law
24 enforcement officers that they didn't go through the
25 security, they didn't put their bags in the x-ray machine,

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1 they didn't go through the metal detector, they don't know
2 what's on them, and that's what makes the conduct of the mob
3 and how they broke into the Capitol so dangerous, is because
4 you don't know what anybody has, and Larry Brock was part of
5 that. He's not the person who came into the building
6 lawfully and went through security and is lawfully inside the
7 building and then makes a disruption up in the gallery. He's
8 not lawfully there, he hasn't gone through security and he's
9 on the Senate floor which nobody would be allowed to do short
10 of staffers or members, and they're supposed to be there
11 right then but they're not because of what the rioters have
12 done.

13 THE COURT: So, my last question is, is related to
14 entry into restricted grounds as opposed to building. Does
15 that provision 1752 require that an individual, Mr. Brock in
16 this instance, know that the grounds are restricted?

17 MS. AYERS-PEREZ: He has to knowingly violate it,
18 but --

19 THE COURT: Has to knowingly but not knowingly and
20 willingly which is the language in other provisions but not
21 in this provision.

22 MS. AYERS-PEREZ: Right, he does have to knowingly
23 do it, and this case --

24 THE COURT: Not just that he's entering in the area
25 but he has to know the area he's entering is restricted.

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1 MS. AYERS-PEREZ: Right, which is why Capitol
2 Police did all they could or did all they did with the
3 restricted perimeter, with the area closed by Capitol Police
4 signs every other bike rack, with the bike racks with the
5 snow fencing, the fact that there were more than one set of
6 those and Captain Patton told us they were all up there that
7 morning, and we haven't heard any evidence that Larry Brock
8 didn't see that stuff that day. I mean it was -- we have
9 evidence that it was there, and that, it wasn't just a sign
10 stapled to a tree that you hope somebody sees that says no
11 trespassing. I mean we're talking about a actual barrier
12 around the Capitol building with multiple sources of barrier
13 with bike racks and snow fencing and signs. It wasn't just
14 one, it was around the entirety of the Capitol in a really, a
15 large restricted area that he had to have gone through to end
16 up where he ended up.

17 THE COURT: All right. Thank you.

18 MS. AYERS-PEREZ: Thank you.

19 THE COURT: I'll give you some time in rebuttal.

20 MS. AYERS-PEREZ: Thank you.

21 THE COURT: Mr. Burnham.

22 MR. BURNHAM: Thank you, your Honor.

23 Your Honor, I'll welcome questions from the bench
24 but failing that, I'll try to go through more or less
25 chronologically what the evidence was which means that I'll

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1 start with the social media record because that's the first
2 thing in time. And as already previewed to the court in the
3 arguments surrounding the admissibility of those, it's a
4 little hard, I submit, to tell exactly how much weight to
5 give to some of that stuff. There's hashtags, we presented
6 one article that shows some of it is quotes, sometimes he's
7 responding to other things that are blacked out, but I submit
8 that there are --

9 THE COURT: Just because he's got a quote from some
10 other source doesn't mean he's not advocating what's in that
11 quote, he's copying it and putting it in his communication.

12 MR. BURNHAM: Well, I think there's other
13 evidence --

14 THE COURT: It may not be his original language,
15 but he seems to be in line with it, right?

16 MR. BURNHAM: I think the remainder of the evidence
17 in the case would show quite clearly whether that was a
18 serious suggestion or not. I introduced the article more to
19 show the tenor of those discussions, it was passing around
20 things on the internet, it was hashtags, it was little
21 sayings like storm the castle. If there was evidence tending
22 to show that the quote from the *American Thinker* article was
23 indeed presented as a real plan to be put into practice, then
24 yes, it would be highly significant evidence, but I
25 absolutely think the court should compare it against what we

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1 know about the conduct that followed.

2 But I think there are -- I do agree that there are
3 two significant things we can take away from the social media
4 record and the first is that Mr. Brock's concern about the
5 2020 election was genuine. This was not just something he
6 drummed up because he didn't want to see Trump lose. He was
7 genuinely concerned about what he had read on the internet
8 about alleged fraud, about illegality. We all have our
9 different opinions about that but I think it's manifest from
10 the record where his head was, that's one thing.

11 The second thing is, is related, is he trusted the
12 United States Congress to fix that problem. He says that
13 multiple times, Government's Exhibit 911, Congress can stop
14 on January 6th; Government's Exhibit 912, hopefully Congress
15 will do what is right, that's referring to the Electoral
16 College. That's where Mr. Brock placed his faith and I'll
17 come back to that.

18 THE COURT: Well, why does that matter that much?
19 Let's say he came to Washington with the hope that Congress
20 was going to fix the problem, but with the firm belief that
21 if Congress didn't, he was gonna be a participant in conduct
22 to fix it because Congress hadn't?

23 MR. BURNHAM: That would be -- that would be highly
24 illegal and problematic but that's not what we have here,
25 neither in the social media evidence nor in his behavior he

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1 doesn't say --

2 THE COURT: He's got a specific plan that he sets
3 out if Congress didn't fix it on January 6th.

4 MR. BURNHAM: I have two things to say about the
5 plan. One about the face of the plan and one in comparing --
6 I submit to the court it's absurd on its face. I started
7 referring to it in my head as the Christmas Eve plan because
8 when you read it, one wonders if Beaf Supreame and Mr. Brock
9 hadn't gotten into the eggnog a little early. Maybe the
10 court shares that view; maybe it doesn't.

11 THE COURT: I love it when counsel take those views
12 of their client. That happens sometimes and I know it's not
13 a serious view of your client, but I understand it.

14 MR. BURNHAM: They're military buddies, obviously
15 they know each other very well, they're talking about cutting
16 off the power to Democratic cities, arresting Mark
17 Zuckerberg, it's so over the top.

18 THE COURT: But isn't it, isn't it at least a
19 reflection of, I'm willing to support serious efforts to stop
20 this election from being certified?

21 MR. BURNHAM: It's absolutely --

22 THE COURT: To stop the Congressional certification
23 of the election?

24 MR. BURNHAM: It's absolutely not, and we can tell
25 that it's not by just looking at -- that's Exhibit 910, if we

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1 just skip forward to Exhibit 912, it makes clear as day it's
2 not a serious plan. 912 is, if your Honor recalls, that's
3 where Mr. Brock tells Beaf Supreame/Drew, I'm going to D.C.,
4 I bought my tickets and Beaf Supreame doesn't say, oh, great,
5 we're going to go arrest Mitch McConnell like we planned just
6 a couple of days ago, he says, why are you going there? And
7 Mr. Brock doesn't say, well, don't you remember we planned
8 out we're going to take over the government? He says, I
9 don't know, I think it's going to be a significant day, I
10 want to be there, and he repeats again, hopefully Congress
11 will do what's right. He says that in that very message.
12 And so without even getting into his conduct on January 6th,
13 just based on the social media record itself, there's enough
14 evidence to find that Exhibit 910 is not a serious statement
15 of intent.

16 THE COURT: Go ahead.

17 MR. BURNHAM: I have one more thing.

18 THE COURT: Just reading those exhibits.

19 MR. BURNHAM: I think it's a useful other way to
20 think about this is, if Exhibit 910 was serious, you know,
21 what would we have expected to see? We would have expected
22 to see Mr. Brock making, you know, contact with other people
23 that could help him, we would have expected to see him
24 assembling some kind of assault force, making plans to go
25 arrest Mark Zuckerberg, making plans to cut off the power to

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1 Dem cities. I mean, if it was a serious thing you'd expect
2 some followup and there's none of that, there's absolutely
3 none, it's two military buddies getting out of hand getting a
4 little too angry about an election that didn't go their way
5 and it stopped there and that's as far as it went.

6 THE COURT: So what do you think, what's your
7 explanation for a Facebook communication on the 1st of
8 January, "Help is on the way, 6 January 2021, storm the
9 castle."

10 MR. BURNHAM: Well, storm the castle is a hashtag,
11 you can see that's in there, means it was something sort of
12 circulating on social media and so to ask what he meant by
13 it --

14 THE COURT: So what's it mean for him to put that
15 in there?

16 MR. BURNHAM: Well, we can tell what it means from
17 his conduct, from his conduct that day, I'll go through it
18 just the way the Government did, is if he went in there and
19 was one of the ones that was breaking the windows, that was,
20 you know, screaming we're going to hang Mike Pence, well,
21 then maybe you'd say storm the castle meant something
22 sinister, but given the way he did that, storm the castle was
23 just a reference to the January 6th rally, that's all it is.

24 THE COURT: So, wasn't he committed to take action
25 on January 6th to keep President Biden ultimately from

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1 becoming President?

2 MR. BURNHAM: Action by supporting the Congressmen
3 and Senators in objecting to the count, that was the action
4 that he intended.

5 THE COURT: By supporting Congress.

6 MR. BURNHAM: Yes, the Stop the Steal Rally was a
7 rally in support, and the President, you know, his comments
8 dovetail with this exactly, it's a rally in support of the
9 Senators and Congressmen that intended to object to the
10 certification. And Agent Glavey acknowledged that that was
11 well known leading up, Congressmen and Senators were saying
12 there are problems with the vote, we have meritorious
13 objections to these states and Secret Service planned out
14 exactly how they were going to accommodate the extensive
15 debate that they knew was going to have to take place.

16 THE COURT: And supporting Congress was what he
17 meant by the second American Revolution?

18 MR. BURNHAM: Well, I think that's something that
19 your Honor can conclude was overheated rhetoric. I think
20 it's not being, trying to have it both ways to draw a
21 distinction between when he seems to be being serious, when
22 he's saying, I hope Congress can fix this, I've read about
23 fraud and when he's saying, oh, hey, it's going to be 1776,
24 we're all patriots, we're going to have a resolution, I don't
25 think he's trying have it both ways to make a distinction

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1 between venting on Facebook about how much you think, you
2 know, how disappointed you are in the election versus serious
3 statements that have some plausible connection to his later
4 actions, that's the distinction that I would make. If
5 there's a statement on social media that has some reasonable
6 relation to his later action, it was meant as a serious
7 statement; if there's a statement that's both a little crazy
8 on its face and has no reasonable relation to his later
9 actions, I think the court can conclude it's just venting on
10 Facebook. That's the distinction that I've tried to make
11 throughout this.

12 And we sort of, we sort of, I got into this a
13 little bit in response to your Honor's questions but I did
14 want to draw the Court's attention to the evidence that's in
15 the record about how the Electoral College was supposed to
16 function because that becomes important. And this came from
17 a couple sources but the Secret Service agent was one, is
18 that, as I already alluded to, there was a process there.
19 Congress and senators were supposed to object to states, that
20 wasn't a nefarious thing, that's, happens every four years,
21 it's the way it's supposed to work. Having opinions that
22 there was fraud in 2020 is not per se corrupt, I mean we can
23 get into the basis for it but it's not a per se corrupt
24 opinion to have. And every witness that I questioned about
25 this confirms that objections to the vote were anticipated,

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1 they were perfectly normal, and even the Secret Service agent
2 said there had been suggestions that perhaps the matter could
3 be remanded to the states. Obviously it was different
4 opinions about whether that's even legally possible but she
5 acknowledged that that was something that had been raised and
6 that's something that the President explicitly raised at the
7 rally. President of the United States said that it could be
8 sent back. So these were all things that were in the
9 atmosphere that were informing the words and actions of the
10 different demonstrators.

11 And that becomes important because I continue to
12 insist that the appropriate analysis does not proceed using
13 analytical category of the mob. There was not one mob, there
14 was -- it's apparent from the video, there were many
15 different types of people there and many different
16 situations. Some people looked like your grandfather in a
17 MAGA hat, some people were terrifying, and some people just
18 looked lost, some people were in certain situations at the
19 Capitol where there was violence and confrontations, others
20 were not. We have to analyze the specific slice of geography
21 and time in which Larry Brock's actions unfolded to come to
22 the right legal result. And the most significant thing is
23 there is a world of difference legally between an individual
24 who entered the Capitol at 2:12 and an individual like Larry
25 Brock that entered the Capitol at 2:24. It sounds like a

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1 small fact, it's not a lot of time, but in terms of legality
2 and the situation on the ground, it makes all the difference
3 in the world.

4 THE COURT: There might be a difference but does it
5 ultimately make a difference in terms of criminal
6 culpability?

7 MR. BURNHAM: I think it does, your Honor,
8 because -- well, let me talk about the -- if it's okay with
9 the Court I'll talk about the restricted area issue and then
10 move forward to the door, I think is what we're --

11 THE COURT: It's your argument, as you wish.

12 MR. BURNHAM: Just want to tee it up.

13 THE COURT: I may divert you from time to time with
14 questions, but go ahead.

15 MR. BURNHAM: I think your Honor asked the exact
16 right question about the restricted area. Was there any
17 evidence that Mr. Brock -- the law absolutely does require
18 him to be on notice, there's no such thing as a secretly
19 restricted area that you could get prosecuted for violating.
20 They have to be on notice, that's clear in the cases that I
21 cited. Not a lot of cases but the ones that exist make that
22 clear. Secondly, in response to your Honor's question, was
23 he on notice of this, the Government couldn't point to any
24 evidence because there isn't any. The statement from the
25 Government is there's no evidence that Mr. Brock didn't see

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1 the barriers and that's sort of not how this is supposed to
2 work. The restricted area is an element they have to prove,
3 it's not something we have to disprove, but we actually did
4 do our best to disprove it in our questioning with Captain
5 Patton if your Honor recalls. I asked him, you know, was
6 it -- did the police attempt to rebuild the barriers after
7 the demonstrators moved them out of the way and he candidly
8 admitted, no, we didn't have the manpower for that, we had
9 bigger problems we didn't do it. And we know that Mr. Brock
10 was -- we don't know exactly how far back but we know he was
11 not anywhere close to the front of the crowd. So even if
12 we -- even if through some burden-shifting argument we had to
13 prove --

14 THE COURT: We know that he wasn't at the front of
15 the crowd?

16 MR. BURNHAM: Yes.

17 THE COURT: We don't actually know that. It
18 depends when you identify the crowd. We see videos of the
19 crowd moving up to the Capitol, moving up to the lower
20 terrace, and delaying there for a while with the line of
21 police, we don't know where Mr. Brock is in that group, do
22 we?

23 MR. BURNHAM: All the evidence supports an
24 inference that he was somewhere towards the middle. We know
25 that for several reasons. One, the time that he entered,

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1 that's one; two, the video, the very brief video where you
2 can see his helmet, he's -- bunch of people in front of him,
3 and --

4 THE COURT: You mean with the hand next to the
5 scaffold?

6 MR. BURNHAM: I think that's somebody else's hand
7 but that's the video, and he's clearly towards the back and
8 so the evidence we do have supports an inference, I would
9 urge the Court, that he wasn't in a position to see the
10 initial confrontations between police or the movement of the
11 bike racks. Certainly there's no direct evidence that he did
12 see any, all the evidence supports an inference the other
13 direction.

14 THE COURT: Well, but where does that take one?
15 Let's say he was in the middle of a group that was pressing
16 against a police line that was trying to keep them from
17 moving forward to the Capitol, and that ultimately, that
18 group, a large group, called a mob by many, broke the police
19 line and breached it and went up to the Capitol. Why is that
20 not clear evidence that he knew he wasn't authorized to go up
21 to and then into the Capitol? He only got there by being
22 part of a large group that overwhelmed the police line
23 keeping them from moving forward.

24 MR. BURNHAM: In your Honor's hypothetical --

25 THE COURT: That's not a hypothetical.

1 MR. BURNHAM: Okay, well --

2 THE COURT: What's hypothetical about what I just
3 said?

4 MR. BURNHAM: Well, the crucial question was, was
5 he in a position to see how the crowd moved forward,
6 that's -- everything depends on that. If there was evidence
7 that he was in a position, even if he wasn't involved, he
8 could see the confrontation, then yes, I have a serious
9 problem, but there's no evidence --

10 THE COURT: A lot of your argument depends on
11 Mr. Brock not seeing anything that's going on around him.

12 MR. BURNHAM: I understand that but --

13 THE COURT: That's part of your argument about him
14 entering the Capitol, and that's now part of your argument
15 about breaching the police line preventing people from
16 getting to the Capitol.

17 MR. BURNHAM: I'm just going from the Government's
18 evidence but I think it's only natural that the people that
19 entered at a certain period of time would, naturally that
20 would be their experience, after the initial incurrence
21 (phonetic) took place but before the police kind of got their
22 act together, it's not surprising that there was a group of
23 people who were able to enter without having any particular
24 indication of exactly what the status of the restrictions or
25 the police intent was, that shouldn't be surprising. If he

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1 came in later after the police had secured the door or after
2 they started trying to get people out, that would be a
3 different situation. If he was in the first wave, obviously
4 that's different. He's in the middle, so it's not surprising
5 at all that that was his experience. I'm not surprised the
6 evidence unfolded that way.

7 THE COURT: Go ahead.

8 MR. BURNHAM: And so I think we analyzed the video
9 of him entering pretty thoroughly in the Rule 29 arguments
10 and I incorporate that now but I just --

11 THE COURT: I'll go back and look at it. I have
12 not gone back and looked at it because I don't have access to
13 it back in my chambers but I will be, at the conclusion of
14 this argument, I will be asking that that exhibit be played
15 again.

16 MR. BURNHAM: Absolutely, yes, absolutely reviewing
17 it is something we're happy to hear the Court's going to do
18 and the facts I think that are crucial are the large number
19 of people proceeding through the door compared to the
20 relative handful that go through the window and the relative
21 orderly manner in which the individuals entering through the
22 door go through. Mr. Brock's body language and expression
23 don't indicate that, you know, he's not sitting there looking
24 around, what's that guy doing, what's that guy doing. For
25 whatever reason, he's straight ahead, and then he turns and

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1 he leaves. We think that's highly significant. As an aside,
2 I don't know that it particularly makes the area restricted.
3 We maintain there's no evidence he saw the people going
4 through the window but I don't know if it converts it to a
5 restriction if he did. It just means certain people there
6 were breaking the law that aren't Larry Brock. Maybe that's
7 relevant to Count One when I get to it but it's not a
8 restricted area if that happens, but again, I absolutely
9 think the evidence supports an inference that he had no
10 opportunity to see those people and he was at that point
11 proceeding in an orderly manner through the door with many
12 others.

13 THE COURT: So let me go back to something that you
14 said earlier, that's sort of part of your theme that the
15 reason Mr. Brock went to the Capitol, I take it that this is
16 your theme that the reason why Mr. Brock went to the Capitol
17 was to support Congressional action to deny certification of
18 the election, right?

19 MR. BURNHAM: Yes.

20 THE COURT: So why did he go into the Capitol? How
21 is that actually helping Congress to certify or not certify
22 the election? How was his going into the Capitol and
23 wandering around in the Capitol helping Congress to do that?

24 MR. BURNHAM: As a show of support to the objecting
25 Senators and Congressmen. I mean, that was the point of Stop

1 the Steal in a way if, based on what we've seen in the
2 evidence is the Stop the Steal, the very name evokes the
3 intention to remedy fraud. The President's remarks, to the
4 extent they've been in the record, very much are along with
5 that theme. It was a show of political support for the
6 Congressmen and Senators who might be on the fence as to
7 whether to object or support objections.

8 THE COURT: That's true of attending the Stop the
9 Steal Rally, of marching to the Capitol, even demonstrating
10 in vast numbers around and outside the Capitol. But why is
11 that true of entering and wandering through the Capitol
12 including going to all these closed areas in the Capitol?

13 MR. BURNHAM: Because --

14 THE COURT: Why is that supporting Congress?

15 MR. BURNHAM: I mean, I'll answer your question,
16 putting aside questions about was it smart, was it well
17 advised, what was he thinking.

18 THE COURT: We don't prosecute, have people
19 prosecuted and convicted of crime because they're not smart,
20 although there's an element of criminal stupidity sometimes,
21 but I'm not saying that's true here.

22 MR. BURNHAM: I mean a thousand times he should
23 have just turned around and left, however pure his
24 intentions, but I think it's only natural that if the object
25 of the protest centered on Congress, the demonstration, the

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1 protest, the show of support, it's only natural if the doors
2 are open, that some of the protest activity would take place
3 inside the building. The captain testified that that's, to
4 the extent possible, consistent with security, that Congress
5 is not the NSA, it's supposed to be somewhere where
6 individuals can to a certain extent petition their elected
7 representatives, designated First Amendment areas right
8 there, it's not outlandish that the demonstration and the
9 show of support might take place inside the building.

10 THE COURT: So I take it that your argument is not
11 that there's evidence that supports the proposition that
12 Mr. Brock thought he had authority to enter the Capitol.
13 It's just that your argument is that it's the government's
14 burden to prove that he knew he didn't have authority.

15 MR. BURNHAM: That's right. I mean, the record is
16 silent on, you know, his, exactly what he was thinking, the
17 Government's burden to prove his intent, the Government's
18 burden to prove the restrictions. I think the reasonable
19 inferences about his behavior was that he was there to
20 support the President and he seems to have been engaged in
21 political activity inside the Capitol in absolutely the most
22 respectful manner he possibly could for reasons I'll get
23 into. I think that's what we can say about his behavior. As
24 to whether, you know, exactly what he thought about why there
25 weren't metal detectors or exactly why the door was left

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1 open, the record is silent on those, but the reasonable
2 inferences that can be drawn are that whatever he was
3 thinking, it wasn't wrongful, it wasn't corrupt, it wasn't,
4 I'm going against the police, it wasn't, I want to obstruct
5 and interfere with government business. Those are really the
6 crucial questions, is there evidence that he had those bad
7 thoughts in his head that criminal offenses require.

8 THE COURT: It also requires to a certain extent a
9 belief that he wore what he wore in order to protect himself
10 against counter-demonstrators. Right?

11 MR. BURNHAM: That's right. And I hope that the
12 Government's witnesses who largely agreed with me on that --

13 THE COURT: No, no, didn't agree with you on why he
14 wore what he wore, they agreed with you on the fact that
15 there had been some clashes in other circumstances between --

16 MR. BURNHAM: That's right.

17 THE COURT: -- pro- and anti-Trump demonstrators.

18 MR. BURNHAM: I mean Sergeant Timberlake, for
19 example, agreed, okay, there's someone in a bike helmet,
20 there's someone in some other kind of helmet, several
21 witnesses agreed there had been such clashes where hard
22 objects were thrown. It supports an inference that that
23 likely was why he was dressed in that manner. Now if he was
24 jousting with police, well, maybe we could say, well, no, I
25 think he had that because he was ready to rumble, but the

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1 evidence is the opposite way. So I think the best evidence
2 is it had been a rough year for protests and he wore personal
3 protective equipment appropriate to those risks.

4 THE COURT: I'll have to review the Facebook
5 communications to see whether they support the view that he
6 was going to be wearing this kind of gear only to protect
7 himself from counter-demonstrators.

8 MR. BURNHAM: One last thing on the entry video is,
9 we think the video, upon careful review, supports our
10 position but to the extent there's any doubt in your Honor's
11 mind about, well, maybe he saw that glass there, I think
12 maybe he, if you -- anything like that, it has to be
13 considered not only in the four corners of the video but in
14 light of the whole picture including the conduct I'm about to
15 evaluate once he gets into the building, that's the way I
16 look at it.

17 And specifically what I'm referring to there is the
18 question is, I guess the Government's contention is he would
19 have had to have seen people going through the window and he
20 said, oh, I guess that means the building is restricted, but
21 you know what, I'm not only not going to pay any attention to
22 the guys going through the window, I'm just charging in
23 myself, no matter what. And so the question that poses for
24 the court is, is that consistent or inconsistent with the
25 rest of his behavior in the building. And really the first,

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1 the first opportunity that he would have had to manifest a
2 wrongful or contrary intention, corrupt intention, intention
3 to be against law enforcement restrictions or anything like
4 that was the situation in the hall with Officer Timberlake.
5 And we take a different view from the Government on that.
6 The Government presented it as inculpatory situation, we
7 think it's exculpatory for obvious reasons and one less
8 obvious. The less obvious one is if you watch the video
9 again or you'll recall it, Mr. Brock wouldn't have been in a
10 position to see the initial confrontation, the assault, the
11 officer said he was hit in the back of the head. And that
12 took place, as you can see in the video, by the door, you
13 know, 10 or 20 yards from the metal detector. At the time
14 when Mr. Brock enters the scene, that confrontation has
15 already kind of stopped and the combatant, so to speak, not
16 Officer Timberlake but his colleague had moved down toward
17 the metal detector and when Mr. Brock comes in, it's from
18 another part of the Capitol and what, the first thing he sees
19 is the other officer whose name I forget with fists raised
20 and then he sees the guy wearing the weird uniform, he's got
21 his fists raised, and that's the first thing he sees. So he
22 doesn't know what led up to it and he doesn't even really
23 know that the individual, the officer there was in fact an
24 officer. They, your Honor recalls, they were wearing blazers
25 and slacks and I think the officer said he had on a tie and I

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1 didn't specifically ask him this but I didn't even see a
2 badge, at least not any kind of prominent badge. So those
3 individuals, I guess you could say they probably weren't
4 demonstrators just based on their attire, maybe, who knows
5 but they could easily have been congressional staffers, some
6 kind of non-law enforcement security personnel, maybe even
7 politicians, based on what the video shows. So at any rate
8 all we can show from the video is that some official-looking
9 person was squared off with a person that looked like he
10 probably was a protester, perhaps even one of the malefactors
11 in the crowd. And Mr. Brock immediately, without even
12 thinking about it, comes in and defuses the situation, calms
13 them down, says that's not what we're here for, you know,
14 that's the way he reacted. And if, and if -- that's
15 completely inconsistent with the Government's contention that
16 he saw people going through the windows and said, you know
17 what, I don't care, I'm charging in, you know, broken
18 windows, who cares? It's totally inconsistent, and that's
19 just the first example.

20 THE COURT: I'm not so sure it's totally
21 inconsistent. I think avoiding confrontation, physical
22 confrontations with the police, with law enforcement is
23 consistent with what the Facebook communications indicate was
24 part of his thinking and plan all along. That those kinds of
25 confrontations and injuries to law enforcement would

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1 interfere with the IO war that he was trying to successfully
2 complete. So trying to avoid, excuse me, physical
3 confrontation with law enforcement could be perfectly
4 consistent with his effort to enter the Capitol in order to
5 prevent Congress from certifying the election. There's no
6 inconsistency there at all.

7 MR. BURNHAM: Well, I guess it depends on exactly
8 what interpretation one gives the Facebook messages, if we're
9 taking Exhibit 910 literally and he's there to take hostages
10 of Mitch McConnell, then he absolutely would have been.

11 THE COURT: I'm not saying that. But just on the
12 IO, wouldn't you agree that part of his messaging in the
13 Facebook communications was, particularly in the
14 conversations with Beaf Supreame, was to avoid physical
15 confrontation and injury to law enforcement?

16 MR. BURNHAM: I think --

17 THE COURT: To have injuries to law enforcement
18 would interfere with and detract from their IO war.

19 MR. BURNHAM: Well, I think it was genuine but I
20 think that was a secondary purpose. Certainly when he
21 explicitly says that this is an IO war, he says that later on
22 the floor of the Senate, that's right, but that's all the
23 more reason he wouldn't have approved of people charging
24 through broken windows. That's, if anything, worse than
25 having words with a police officer.

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1 THE COURT: Well, that's not, that's not -- having
2 words is not the same as injuring the police officers. But
3 having words leads to possible confrontation, but anyway,
4 we're probably digging too deeply into that.

5 MR. BURNHAM: Well, one final point because I think
6 it is a relevant question is if part of his mentality there
7 is I want to win the IO war, meaning I don't want Trump
8 supporters, patriots looking bad, he absolutely would not
9 have approved of people coming in through the window. That
10 would be absolutely opposite of what winning the IO war would
11 be. That's terrible and that's exactly how it's played out,
12 is those footages are now iconic of everything that was wrong
13 with January 6th. And that's exactly what he explicitly
14 was -- any kind of property destruction, this is what he
15 specifically says on the balcony of the Senate, nobody breaks
16 anything, we're patriots, be respectful. So all the evidence
17 is that, even taking IO war comments into account, that
18 breaking windows, going through windows was anything he would
19 have approved of.

20 THE COURT: All right.

21 MR. BURNHAM: Court's indulgence.

22 THE COURT: Certainly.

23 MR. BURNHAM: As to the -- as to the statement on
24 the floor of the Senate, the Government is presenting his
25 comments to the man in the chair as aggravating. Maybe the

1 quotes that they pulled out were sort of out of context from
2 that video. The video speaks for itself. The Government is,
3 you know, they're making their case and so they're casting
4 Mr. Brock's actions a certain way. Instead of walking to the
5 Capitol, they say he's marching to the Capitol; instead of
6 walking around the Capitol, they say he's maneuvering around
7 the Capitol, that's their theme of their case. But the full
8 quote of the Senate floor is, if I can, I think I can quote
9 it from memory at this point, is, get out of that chair,
10 that's not our chair, that belongs to the Vice President of
11 the United States. I love you guys, we're brothers, but we
12 can't be disrespectful. That was the full quote. Not the
13 parts the Government pulled out.

14 And I'll do a little digression here is that, Agent
15 Moore offered some testimony on this, is if there was anybody
16 that was gonna be in a bad odor that day with some segments
17 of the demonstrators, it was the Vice President Pence for
18 political reasons. So if there was a time when any kind of
19 ill will towards politicians was gonna come out, it was going
20 to have to do with the Vice President, and you saw the
21 absolute opposite reaction from Mr. Brock. We have to show
22 respect to the Vice President. And I think your Honor asked
23 the exact right questions on the key issue. I mean, if there
24 was a reason to believe that someone told him the Vice
25 President was in there, that would be a totally different

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1 case but that's not what we have. It might have been a
2 boneheaded move to try to go in a locked door, but it's not
3 indicative of any particular purpose. I mean it said U.S.
4 Senate, it didn't say secret office, didn't say hiding place
5 or anything. It was an ill-advised thing for him to do.

6 And so what is the role of law enforcement here?
7 If we can step back, it's a fact that can kind of get hidden
8 in all these videos that sort of have to be pieced together,
9 is based on my review of the evidence, from about 2:37 p.m.
10 which was the scene at the Rotunda door where there were
11 three officers there, till around 2:55, if you don't count
12 Sergeant Timberlake and his colleagues who were dressed in
13 plain clothes, even they -- I'll come back to that. If you
14 don't count those gentlemen, Mr. Brock didn't encounter any
15 law enforcement at all for that entire time period. And even
16 if, even if the supposition is maybe he would have known
17 Officer Timberlake and his colleagues were law enforcement,
18 the officer didn't testify to giving any particular
19 directives to Mr. Brock. He didn't testify he said this is
20 an unlawful assembly, you guys need to get out or anything
21 like that. So there was no law enforcement interaction for
22 almost 20 minutes, and the one possible exception to that
23 didn't involve any particular directives, and this is -- the
24 case is on 1752 and this is relevant to 1512 as well. It's a
25 total game changer if an officer tells you you're not

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1 supposed to be here, get out, that would be a totally
2 different situation, and we don't have that.

3 And the first significant law enforcement
4 interactions we have come towards the end, and there are two
5 of them, one of which has no sound, but actions, you know,
6 speak louder than words sometimes. And what I'm referring to
7 is first there's the -- I think the Government presented in
8 the opposite way but I think this one comes first is there's
9 a video where Mr. Brock is walking down a long hallway and
10 there's probably about ten or a dozen members of the police
11 walking around. He's got his flex cuffs and as came out in
12 questioning, he's not trying to hide them, he's not like
13 trying to, you know, put them in his jacket or anything, so
14 he walks by the police and at first police don't pay him any
15 mind at all, you can't even see a police officer even
16 noticing him. He's not a police officer, that's obvious. He
17 just walks right by and then ultimately an officer comes out
18 and you can't hear what he says but he seems to be giving
19 Mr. Brock directives. You can see him moving and Mr. Brock
20 turns directions, goes back the other way. So I think the
21 reasonable inference is that police officer said, no, you got
22 to go this way, probably to get out of the building. And I
23 say that in part because of the final vignette when he does
24 exit just a few minutes later.

25 But before I get to that I'll make a brief comment

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1 on the Officer Humphrey video which is around this time, I
2 think it's like one minute later, and that actually does have
3 sound because there's -- it's the body worn camera. And so
4 there you see him walking down and, you know, he didn't
5 testify so this isn't presented great in the record, but
6 Agent Moore agreed certain aspects of the military can cause
7 hearing loss in older men, and aviation, I think our common
8 experience tells us that could be it. So to the extent
9 that's in the record, that's something the court can think
10 about, but then even added to that is Mr. Brock's body
11 language there. He's looking down, it looks like he's
12 looking at his phone, he never looks at the officers even
13 once and he continues walking down the hallway. The officer
14 agreed he didn't run and I would suggest, I didn't even see a
15 change in pace after the officers called out to him. You
16 know, it was a noisy situation in there, you can even hear
17 that a little bit in the body worn camera and the officer,
18 two of the officers start to go down the hall after him but
19 when they're still about 20, 30 feet away in my estimation,
20 they just stop and leave.

21 So I don't think there's any inference there that
22 he was disregarding law enforcement, especially not for the
23 video just a couple minutes later has him exiting, seemingly
24 under the supervision of multiple law enforcement officers in
25 an orderly way. And as I've already commented upon, he sort

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1 of calms down the guy that seems like he was, if at least not
2 physically interacting with law enforcement, not leaving and
3 he seemed like he was giving them some lip. And Mr. Brock,
4 using his size, his command presence as has been commented
5 upon, pats that guy on the shoulder, turns him around and
6 they go out together peacefully. This was before the
7 President told everybody to leave, this was before the
8 Electoral College result had been decided. There's no
9 evidence that he had to be forced out, and so I think that
10 voluntary departure before the issue had been settled speaks
11 volumes, especially in connection with everything else about
12 his -- about his actual intent there that day combined with
13 everything else.

14 So I keep repeating that all the evidence has to be
15 viewed together because I sound like a broken record perhaps
16 but I truly, strenuously contend that if you look at the arc
17 of the whole story, starting with the Facebook messages
18 through his whole conduct, his true intent emerges,
19 especially when you add in the one thing I haven't mentioned,
20 which is his personal -- his history and personal
21 characteristics. Now we're not in a sentencing hearing, this
22 is a criminal case but 1512, Count One, has an elevated mens
23 rea from most other criminal offenses and we can understand
24 why that would be. It criminalizes attempting to influence
25 official proceedings. If there wasn't some kind of elevated

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1 mens rea, that would be an extremely problematic statute for
2 our civic life. Mr. Brock had to know that his conduct was
3 corrupt, meaning wrongful. So he doesn't have to know he was
4 violating 1512, but he had to have the specific intent to act
5 in a wrongful way and we submit that all the evidence shows
6 that, misguided though other people may think he was, he
7 absolutely believed that he was acting in an upright way in
8 accordance with the law and in accordance with patriotism,
9 out of respect for law enforcement. And I absolutely think
10 it's appropriate for your Honor to take into account what's
11 come into evidence about his military record and ask, is it
12 the best view of the evidence, is there proof beyond a
13 reasonable doubt that this individual who, throughout the
14 late '80s, '90s, throughout the whole war on terror, through
15 multiple combat deployments, chose to serve this country in
16 defense of Democracy as he understood it in defense of our
17 institutions, he clearly took great pride in his service,
18 even to the point where he still had, even as a 50-year-old
19 man, the patch from his old unit there, I think that's highly
20 relevant and should be taken into account when asking the
21 question of, is this someone who was acting wrongfully, who
22 knowingly was doing the wrong thing.

23 THE COURT: To take it into account and lead to the
24 conclusion you wish me to reach does require that I also give
25 the Facebook communications the interpretation that you urge

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1 that I employ.

2 MR. BURNHAM: Yes, your Honor.

3 THE COURT: And not take many of them seriously.

4 MR. BURNHAM: Yes, your Honor. I can only repeat
5 what I think is the most sensible view is look at the
6 Facebook communications and in light of, both on their face,
7 is this something that's kind of absurd, and is it consistent
8 or inconsistent with later conduct. That's the way to
9 separate what's significant in the Facebook record from
10 what's not.

11 THE COURT: All right. Anything else?

12 MR. BURNHAM: Thank you, no, that's all I have.
13 Thank you, your Honor.

14 THE COURT: Thank you, Mr. Burnham.
15 Ms. Ayers-Perez, I'll hear from you in rebuttal, briefly.

16 MS. AYERS-PEREZ: Thank you, your Honor. In
17 response to a few of the points Mr. Burnham makes, the first
18 being about the restricted area and the grounds, once again,
19 we heard from Captain Patton what that looked like, and even
20 though people have gone through and of course breached that
21 perimeter in some areas, certainly bike racks on the ground,
22 snow fencing on the ground, signs on the ground as people
23 have gone past them are still there, but it's not in all
24 areas. But what is really noting -- or that I've taken note
25 of about what Larry Brock is wearing on January 6th is that

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1 Mr. Burnham speaks about counter-protesters and Larry Brock
2 was at the Stop the Steal Rally and he was there and he had
3 bought his combat gear, his helmet, he bought the tactical
4 vest prior to coming up there, but he's not wearing the
5 helmet when he's at the Stop the Steal Rally, which is where
6 you would encounter counter-protesters such as, I believe
7 Mr. Burnham mentioned Antifa or Black Lives Matter mentioned
8 earlier. He's not wearing his helmet and in fact when you
9 see the still shot in the video of him walking down
10 Constitution Avenue towards the Capitol, he's still not
11 wearing his helmet. It's when he's next to the scaffolding
12 already on the Capitol, on the west side of the Capitol that
13 he's now put his helmet on. And so that tactical gear, the
14 combat gear that he brought to Washington, D.C., he didn't
15 wear it to the protest, the helmet, he wears it to go inside
16 the Capitol building, which was his whole purpose for being
17 there that day.

18 And Mr. Burnham mentions the defendant was
19 supporting Congress. Well, Congress is trying to do a job
20 that day. If the defendant is supporting Congress, Congress
21 has to stop because the defendant and others are entering
22 into the Capitol building illegally without any sort of
23 making sure there's any sort of security concerns or that
24 he's gone through any sort of security measures to get in.
25 Congress can't do their job which -- because the defendant is

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1 inside of there. And if you're trying to help Congress,
2 you're not going to go into Congress in combat gear and think
3 that you're going to make a difference. Larry Brock doesn't
4 actually think that. He's on the Senate floor where the Vice
5 President should be conducting business and he knows that,
6 because, as we've seen in the video, he's telling people this
7 is the Vice President's chair right there. He knows that the
8 Vice President is supposed to be there that day.

9 And so much of Larry Brock's Facebook rhetoric,
10 much of which we see actually come to fruition on January 6th
11 when he says, I want to actively rebel, I'm going to buy this
12 combat gear, storm the castle. What else could that mean on
13 January 6th other than go into the Capitol building which is
14 what he did? All of that comes to fruition, the Facebook
15 post at 9:10, the one from the Christmas Eve where he's
16 talking about the list of what he wants to have happen is
17 supposed to take place if nothing happens on January 6th. If
18 Congress certifies the vote on January 6th. He was arrested
19 four days later afterwards. We don't know what else he would
20 have done, but that message was not for what was going to
21 happen on January 6th, it says at the top, this is what
22 happens if Congress fails to act on January 6th.

23 And you know, to Mr. Burnham's point, to not
24 understand that there's a restricted perimeter, he would have
25 had to miss all the signs, the snow fencing, the bike racks,

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1 had to have missed people going into windows, had to have
2 missed the broken door, had to have missed the broken glass
3 on the ground, had to have missed the fact that the entire
4 mob is with him, had to have missed the fact that he wasn't
5 going through security, it doesn't make sense.

6 THE COURT: And have to miss the police lines that
7 were holding the mob back.

8 MS. AYERS-PEREZ: Yes, and in one of the photos
9 taken from the defendant's phone in the 300 series and I can
10 give you the exact number, your Honor, I believe it's 315 --
11 yes, okay, 315, the defendant takes a photo on January 6th on
12 the west side of the Capitol near the Senate Wing Doors while
13 still outside the Capitol and there are two police officers
14 standing outside one of the doors in his photo. He has the
15 photo right there on his phone and it shows officers standing
16 outside another door while he's still outside the Capitol and
17 hasn't entered yet. So he would have had to miss the photo
18 that he took himself as well. This was a clearly restricted
19 area that he went into, the building, he shouldn't have been
20 in there, there's sign after sign inside the building in the
21 sense that there's officers at the door, there are doors
22 broken, windows broken, there's Sergeant Timberlake being
23 assaulted by fellow rioters, and still he continues on and
24 continues on to the Senate floor. And he only left after he
25 achieved his mission of going on the Senate floor, being

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1 there, walking around, looking at desks of what Senators have
2 on the Senate floor and paperwork that's there on the Senate
3 floor and it's only after all of that that he finally leaves
4 the Capitol building.

5 And lastly, your Honor, Mr. Burnham mentioned that
6 Larry Brock had the most respectful manner he could when he
7 went into the Capitol and there on the Senate floor and I
8 would surmise that that's absolutely not true. He broke into
9 the Capitol building, he went into -- onto the Senate floor,
10 and although he did tell people on the Senate floor to be
11 respectful, the fact that he was there, the actions that he
12 took to get there are not respectful at all to Congress, to
13 the Vice President, to this country, and to what he did.
14 That's all I have, your Honor.

15 THE COURT: All right. Thank you. Okay. It's
16 4:00. The one thing I would like to do before we adjourn for
17 the day -- we're going to come back tomorrow morning, I'm not
18 going to try to pack in resolution of the case here this
19 afternoon. We'll reconvene tomorrow morning, but the one
20 thing I would like to do is I'd like to look at the evidence,
21 that video of the entire video that's in evidence of his
22 entry into the Capitol. I don't want just the still shot or
23 a portion of it, I want to see the whole thing.

24 MS. AYERS-PEREZ: We can play it right now if you
25 want.

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1 THE COURT: That's what I want. Yeah.

2 MS. AYERS-PEREZ: Okay.

3 THE COURT: Thank you. I wasn't asking to take it
4 back there. And refresh me, what exhibit number is it?
5 You're going to have to figure that out to pull it up.

6 MS. AYERS-PEREZ: It's 411.

7 THE COURT: 411, okay, thank you.

8 (Government's Exhibit 411 playing.)

9 THE COURT: All right, that's at 2:24:27. Would
10 you also pull up the video of the actual breaking of the
11 windows. There's another exhibit that covers those and I'd
12 like to see the time.

13 MS. AYERS-PEREZ: Your Honor, this is 401, and I'm
14 sorry, starting at 6 minutes 28 seconds.

15 (Government's Exhibit 401 playing.)

16 MS. AYERS-PEREZ: Your Honor, this is the second.

17 THE COURT: This is after Mr. Brock's already in?

18 MS. AYERS-PEREZ: Correct, this is four minutes
19 later.

20 (Government's Exhibit 401 playing.)

21 THE COURT: All right. Okay. Thank you. We can
22 start at 10:00 if you'd rather start at 10:00, give
23 yourselves a little extra shuteye. So let's be back at 10:00
24 and I think you'll be hearing from me at 10:00 tomorrow
25 morning rather than me hearing from you. Thank you very much

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1 for the presentation. You should make sure in checking with
2 Mr. Bradley with respect to all the exhibits that we have all
3 the exhibits straight and in the record so that we have a
4 complete record to consider. And with that, I will see you
5 all in the morning. Thank you. Do you have the originals of
6 the stipulations?

7 THE CLERK: I think you have them.

8 THE COURT: I have them. I'll hold them for now.

9 THE CLERK: Okay.

10 (Court Adjourned, 4:09 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
Official Realtime Court Reporter, in and for the
United States District Court for the Northern
District of New York, DO HEREBY CERTIFY that
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Code, that the foregoing is a true and correct
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proceedings held in the above-entitled matter and
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Dated this 27th day of November, 2022.

/S/ JODI L. HIBBARD

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Official U.S. Court Reporter

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VOLUME III
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
-----x
UNITED STATES OF AMERICA

vs. 21-CR-140

LARRY RENDALL BROCK,

Defendant.

-----x

Transcript of a Bench Trial held on
November 16, 2022, at the E. Barrett Prettyman U.S.
Courthouse, 333 Constitution Avenue, N.W.,
Washington, D.C., the HONORABLE JOHN D. BATES,
Senior Judge, Presiding.

A P P E A R A N C E S

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1 (Open Court, 10:03 a.m.)

2 THE CLERK: Your Honor, we have criminal action
3 21-140, United States of America versus Larry Brock, and all
4 counsel are present.

5 THE COURT: All right. Good morning to everybody.

6 MR. BURNHAM: Good morning, your Honor.

7 THE COURT: It's now my responsibility to rule on
8 certain things. Under Criminal Rule 23, specifically 23(c)
9 for a nonjury trial, I'm obliged to find whether defendant is
10 guilty or not guilty on each of the charged offenses. That
11 rule also provides that, if a party requests, then the Court
12 must state its specific findings of fact in open court or in
13 a written decision or opinion. No one's requested it, but
14 I'm going to do it anyway and give you a fairly fulsome
15 review of the case in ruling on what is my responsibility to
16 rule on, which is resolution of the Rule 29 motion and, if
17 that is denied, then addressing the defendant's guilt or
18 innocence on each of the charges.

19 Now many motions and cases turn on resolution of
20 factual issues. This case does not. There's little dispute
21 as to what Mr. Brock said and what he did on January 6th,
22 2021. The question is more what his statements and conduct
23 mean and did his conduct on January 6th violate the law.
24 These are largely questions of his intent and whether he
25 acted knowingly in certain contexts.

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1 I will say as I begin that for the most part, I
2 reject the, what I'll call the innocent interpretations
3 offered by the defense with little evidence in the record to
4 support those positions.

5 So first with respect to Rule 29, Rule 29(a) of the
6 Federal Rules of Criminal Procedure provides that "[a]fter
7 the government closes its evidence or after the close of all
8 the evidence, the Court on the defendant's motion must enter
9 a judgment of acquittal of any offense for which the evidence
10 is insufficient to sustain a conviction." Now I will treat
11 the Rule 29 motion as it was made, which was at the close of
12 the government's case, and as renewed at the close of the
13 defense case, which consisted only of the introduction of a
14 couple of exhibits. When ruling on a motion for judgment of
15 acquittal, the Court must "consider[] the evidence in the
16 light most favorable to the government and determin[e]
17 whether, so read, it is sufficient to permit a rational trier
18 of fact to find all of the essential elements of the crime
19 beyond a reasonable doubt." And that's a quote from *United*
20 *States v. Kayode*, 254 F.3d 204, jump cite 212-13, D.C.
21 Circuit 2001, which itself is quoting *United States v.*
22 *Harrington*, 108 F.3d 1460, jump cite 1464, D.C. Circuit 1997.
23 The Court must "accord[] the government the benefit of all
24 legitimate inferences" and deny the motion if "any rational
25 trier of fact could have found the essential elements of the

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1 crime beyond a reasonable doubt." *United States v. Jabr*,
2 Criminal Number 18-0105, 2019 WL 13110682, at *3, D.D.C.
3 case, May 16, 2019. That itself quotes *United States v.*
4 *Weisz*, 718 F.2d 413, jump cite 437, D.C. Circuit 1983, and
5 *United States v. Arrington*, 309 F.3d 40, jump cite 48, D.C.
6 Circuit 2002.

7 "The same standard guides a district court in
8 resolving a Rule 29 motion whether in the context of a bench
9 or jury trial." *Jabr*, at *4. At the moment of deciding a
10 motion for judgment of acquittal, "this Court is not the
11 trier of fact," *United States v. Recognition Equipment, Inc.*,
12 725 F.Supp. 587, jump cite 588, n.1, D.D.C. 1989.
13 Accordingly, the Court is not yet stepping into the jury's
14 shoes to assess the defendant's guilt or to make any findings
15 about witness credibility but, rather, is "simply applying a
16 legal standard to the government's evidence." *United States*
17 *v. Recognition Equipment*, 725 F.Supp. at 588, n.1, that same
18 citation.

19 The Court will deny Brock's motion for judgment of
20 acquittal. I conclude that the Government presented
21 sufficient evidence such that a rational fact finder could
22 find beyond a reasonable doubt that all elements of each of
23 the charges against Brock have been met. For the sake of
24 brevity, however, the reasons for the Court's denial of the
25 Rule 29(a) motion for judgment of acquittal are the same as

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1 the reasons the Court will give in its findings and
2 conclusions in deciding the case and the guilt or innocence
3 of Mr. Brock. And that's consistent with the approach in
4 *United States v. Rivera*, Criminal Case Number 21-060, ECF
5 Number 63, taking the same approach in denying a Rule 29(a)
6 motion in another January 6th case.

7 Here, in early January 2021, Mr. Brock traveled
8 from Texas to Washington, D.C. where he participated in the
9 riot at the United States Capitol on January 6th. And I'm
10 now proceeding to address the case itself and the charged
11 offenses and Mr. Brock's guilt or innocence on each of those
12 charged offenses. The details of his participation were
13 described by witnesses and through evidence presented in this
14 trial over two days. Specifically, the Government alleges
15 that his conduct on January 6th violated a number of federal
16 statutes, as set out in the six counts in the superseding
17 indictment: Count One, obstruction of an official proceeding
18 and aiding and abetting in violation of Title 18 of the U.S.
19 Code, Sections 1512(c)(2) and Section 2; Count Two, entering
20 and remaining in a restricted building and grounds in
21 violation of 18 U.S.C. Section 1752(a)(1); Count Three,
22 disorderly and disruptive conduct in a restricted building or
23 grounds in violation of 18 U.S.C. Section 1752(a)(2); Count
24 Four, entering and remaining on the floor of Congress in
25 violation of 40 U.S.C. Section 5104(e)(2)(A); Count Five,

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1 disorderly conduct in a Capitol building in violation of 40
2 U.S.C. Section 5104(e) (2) (D); and finally, Count Six,
3 parading, demonstrating, or picketing in a Capitol building
4 in violation of 40 U.S.C. Section 5104(e) (2) (G).

5 So over the last two days, the Government called
6 five witnesses: Sean Patton, a United States Capitol Police
7 Captain; Elizabeth Glavey, a Secret Service agent who was
8 assigned to then-Vice President Pence's detail; Nairobi
9 Timberlake, a Capitol Police Sergeant, present on duty in the
10 Capitol on January 6th; Maggie-May Humphrey, an MPD officer,
11 also there on that day; and John Moore, a special agent with
12 the FBI, the only one of the five witnesses who was not
13 present at the Capitol on January 6th. The defense did not
14 call any witnesses. Special Agent John Moore testified about
15 Facebook messages that he recovered from Mr. Brock's account
16 showing Mr. Brock's reaction to the November 2020 election,
17 which he believed was a "fraud." Testimony from the other
18 witnesses and videos illustrated the breach of the Capitol
19 that occurred and tracked Mr. Brock's movements throughout
20 the Capitol on the afternoon of January 6th, 2021. After
21 considering all of this evidence and the arguments of counsel
22 as well, for the reasons that I am now going to explain, I
23 find Mr. Brock guilty on each of the six counts.

24 First with respect to Count One, obstruction of an
25 official proceeding. Count One of the indictment charges

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1 Mr. Brock with corruptly obstructing an official proceeding.
2 To find him guilty of this offense, I must find the following
3 four elements beyond a reasonable doubt:

4 First, that he attempted to or did obstruct or
5 impede an official proceeding;

6 Second, that he acted with the intent to obstruct
7 or impede the official proceeding;

8 Third, that he acted knowingly, with awareness that
9 the natural and probable effect of his conduct would be to
10 obstruct or impede the official proceeding; and

11 Fourth, that he acted corruptly.

12 First, Mr. Brock obstructed Congress' election
13 certification. He was part of the large crowd of
14 demonstrators who breached the Capitol on January 6th during
15 the election certification proceedings. That's set out in
16 Government's Exhibit 708. And I'm going to give citations to
17 exhibits on occasion throughout this. As we heard from Agent
18 Glavey, this breach caused Congress to adjourn its session
19 because it was no longer safe for members of Congress to be
20 in the Capitol. Glavey transcript at 37-41. And although
21 Mr. Brock entered the Capitol after Congress had at least in
22 part adjourned, he was part of the greater mob that breached
23 the Capitol, which caused the proceedings to be adjourned and
24 not to be continued in the short term. Government's
25 Exhibit 708. Moreover, after breaching the Capitol,

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1 Mr. Brock remained in the building for approximately 37
2 minutes, during which time his presence, along with the
3 presence of many others, continued to obstruct the proceeding
4 by preventing Congress from reconvening. Government's
5 Exhibit 708. In fact, Mr. Brock was on the floor of the
6 Senate where the proceedings should have been occurring had
7 the crowd not breached and entered the Capitol.

8 Other cases in this district have found that
9 actions like that of Mr. Brock's constituted obstruction of
10 an official proceeding. Examples, in *United States v.*
11 *Reffitt*, Criminal Case Number 21-32, at 2022 WL 1404247, the
12 Court upheld a jury's verdict that a defendant who did not
13 even enter the Capitol building could nonetheless be found
14 guilty under Section 1512(c)(2) because "by leading a crowd
15 to breach the police line, [the defendant] helped to halt,
16 and thus obstruct, Congress' Joint Session." In *United*
17 *States v. Rivera*, Criminal Case Number 21-060, citation 2022
18 WL 2187851, June 17th, 2022 decision, the Court rejected the
19 defendant's arguments that he did not in fact obstruct
20 congressional proceedings because both Houses of Congress had
21 recessed by the time that he entered the Capitol. The Court
22 found this argument failed because "proceedings could not
23 recommence until the entire building was secured and cleared
24 of rioters. Indeed, even the presence of one unauthorized
25 person in the Capitol is reason to suspend Congressional

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1 proceedings." That's jump cite in the *Rivera* case at *6.
2 The Court continued to explain that "[m]any rioters
3 collectively disrupted Congressional proceedings, and each
4 individual rioter contributed to that disruption." *Id.*,
5 that's a citation to the same page in *Rivera*.

6 Moreover, in my earlier decision in this case,
7 August 31st memorandum opinion denying various defense
8 motions, I explained that "[t]he joint session continued to
9 be obstructed, influenced, and impeded even after Vice
10 President Pence and Members of Congress had fled, as it
11 continued to remain in limbo as the January 6 mob flooded the
12 Capitol throughout the day." *United States v. Brock*,
13 Criminal Case Number 21-140, the citation 2022 WL 3910549.

14 Now second, Mr. Brock acted with the intent to
15 obstruct or impede the election certification when he
16 breached the Capitol building. His Facebook messages show
17 that he intended to obstruct proceedings at the Capitol on
18 January 6th. Some of the more probative messages include the
19 following:

20 December 6, 2020, "We need to restore the
21 Constitution and the best and shortest way is to go offensive
22 on the Communists that stole it, aka the Democratic Party."
23 That's Government's Exhibit 906.

24 December 18, 2020, "I want to actively rebel," in
25 response, this was in response to his friend's message

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1 regarding Biden "steal[ing] the election." Government's
2 Exhibit 909.

3 Third, December 24th, 2020. Outlining a "Plan of
4 Action if Congress fails to act on January 6th: Seize all
5 democratic politicians and Biden and key staff."... "Do not
6 kill LEO unless necessary." And LEO stands for law
7 enforcement officers. So I'll repeat that. "Do not kill law
8 enforcement officers unless necessary. Gas would assist in
9 this if we can get it." Another quote, "Attempt to capture
10 Democrats with knowledge of coup." And that's from
11 Government's Exhibit 910.

12 Next, December 26, 2020, we're moving up towards
13 January 6th, we're now about two weeks from January 6th.
14 Little less than two weeks. "Those are the last two peaceful
15 options," referring to Congress or the Supreme Court acting
16 to overturn the election results. Government's Exhibit 911.

17 Next, December 27th, 2020. "I prefer outright
18 insurrection at this point," in response to his friend saying
19 that "[r]iots are for chimps." Mr. Brock then said that he
20 "[b]ooked the hotel. Now need to book flights" to "DC on the
21 5th-7th." That's Government's Exhibit 913.

22 Next, December 28, 2020, "Want to see some panic.
23 Start playing the Purge Siren outside the Capitol on 6
24 January 2021. Watch Nancy flee." That's Government's
25 Exhibit 913 as well.

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1 January 1st, 2021. "Help is on the way. 6
2 January 2021. #MAGA, #StormtheCastle." That's Government's
3 Exhibit 914.

4 And on January 5th, 2021, "Our second American
5 Revolution begins in less than 2 days."

6 Going further, "Biden won't be inaugurated. We
7 will ensure that on the 6th." Those are both from
8 Government's Exhibit 915.

9 Taken together, these messages indicate that
10 Mr. Brock came to the Capitol on January 6th with the intent
11 to obstruct Congress' certification of the 2020 election
12 results.

13 In addition, Mr. Brock's choice to outfit himself
14 in tactical gear and a helmet shows that he expected that
15 events might get violent inside or outside the Capitol on
16 January 6th -- there is no evidence in the record that
17 Mr. Brock wore this gear to protect himself from
18 counter-protesters. There may be some evidence that there
19 were occasional clashes in other contexts between protesters
20 on one side and another but there's no evidence that that's
21 why he wore this tactical gear, and I reject the unsupported
22 view of defense counsel that that's the explanation for why
23 he wore the tactical gear.

24 Further, it is implausible that Mr. Brock's intent
25 was simply to support Congress members in objecting to the

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1 election results. That is not consistent with his
2 communications in advance of January 6th. And Mr. Brock's
3 actions of breaching the Capitol building, which caused the
4 proceedings to stop, meaning no Congress members could object
5 because the proceeding had ceased, cannot reasonably be
6 construed to be just in aid of Congress. Excuse me.

7 In any event, "[t]he law permits the factfinder to
8 infer that a person intends the natural and probable
9 consequences of their actions." That's from *United States v.*
10 *Mejia*, 597 F.3d 1329, jump cite 1341, D.C. Circuit 2010, and
11 it is reasonable that Mr. Brock would have expected that
12 breaching the Capitol building during the election
13 certification proceedings would cause those proceedings to
14 halt during the period in which there were unauthorized
15 people, many people, including himself, within the Capitol
16 building roaming the halls of the Capitol and at the
17 locations of events that were to take place in the Capitol in
18 the context of certification of the election proceedings.

19 Third, Mr. Brock acted knowingly, with awareness
20 that the natural and probable effect of his conduct would be
21 to obstruct or impede the official proceeding. A person acts
22 "knowingly" if he realizes what he is doing and is aware of
23 the nature of his conduct, and does not act through
24 ignorance, mistake, or accident. As discussed already in the
25 second element, it is reasonable to conclude that Mr. Brock

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1 was aware that his actions in entering the Capitol would have
2 the probable effect of obstructing the election certification
3 that day.

4 Fourth, I find that Mr. Brock acted corruptly.
5 "[Courts] in this district have construed 'corruptly' to
6 require a showing of dishonesty, an improper purpose, [or]
7 consciousness of wrongdoing." And that's a quote from *United*
8 *States v. Puma*, Criminal Case 21-0454, citation is 2022 WL
9 823079, at *10, a D.D.C. case decision, March 19, 2022. And
10 that quotation was cleaned up a little bit. As discussed in
11 the second element, Mr. Brock's Facebook messages support
12 that he knew obstructing the election certification on
13 January 6th was improper. Mr. Brock's Facebook posts leading
14 up to January 6th suggest that he was prepared to break the
15 law to achieve his goals -- saying, for example, "If
16 necessary I aim to misbehave," that's Government's
17 Exhibit 905, or that he thinks it may be necessary to
18 "restore the Republic through force of arms," that's
19 Government's Exhibit 908. Mr. Brock knew that some actions
20 he contemplated were illegal -- describing a plan to have
21 "several hundred[] thousand Patriots descend[] on dc refusing
22 to let Biden be inaugurated," which his friend acknowledged
23 would amount to "load[ing] up our trucks and go[ing] to DC
24 and hop[ing] we don't get arrested." That's from
25 Government's Exhibit 909. Specifically, in reference to

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1 January 6th, he used the hashtag #StormtheCastle, indicating
2 that he knew any attempts to enter the Capitol would require
3 "storming" it, which would, of course, be illegal.
4 Government's Exhibit 914. The messages also refer to
5 Mr. Brock's desire to engage in "insurrection" and
6 rebel[lion]," and also allude to taking violent action, such
7 as "going offensive" on Democrats, "seiz[ing]" Democratic
8 politicians, and even killing law enforcement officers "if
9 necessary." Mr. Brock also refers to action by Congress or
10 the Supreme Court as the "last two peaceful options" in
11 response to what he perceived to be fraudulent election
12 results. Moreover, as discussed above, Mr. Brock's outfit of
13 tactical gear tends to show that he believed violence was a
14 possibility at the Capitol on January 6th.

15 Now I don't necessarily believe that Mr. Brock
16 intended to do everything that he said in his Facebook posts.
17 I think it's unlikely that he did. Indeed, that would be a
18 stretch to believe that he did. But there's enough in there
19 to indicate that he clearly intended to take very purposeful
20 actions to interfere with any certification of the election,
21 and even to take actions that bordered on violent conduct and
22 improper steps to impede the Congressional action of
23 certification of the election.

24 Hence, for all these reasons, I find that Mr. -- I
25 find Mr. Brock guilty on Count One, obstruction of an

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1 official proceeding, and I find that beyond a reasonable
2 doubt.

3 Count Two, which is entering or remaining in a
4 restricted building or grounds. That's Title 18 of the U.S.
5 Code Section 1752(a)(1). That count charges Mr. Brock with
6 entering or remaining in a restricted building or grounds.
7 To find him guilty, I must find the following elements beyond
8 a reasonable doubt: That he entered or remained in a
9 restricted building or grounds without lawful authority to do
10 so; and that he did so knowingly.

11 First, Mr. Brock entered or remained in a
12 restricted building or grounds without lawful authority to do
13 so. A "restricted building or grounds" is defined as any
14 posted, cordoned-off, or otherwise restricted area of a
15 building or grounds where a person protected by the Secret
16 Service is temporarily visiting. It is undisputed that
17 Mr. Brock entered the Capitol building at 2:24 p.m. on
18 January 6th and remained in the Capitol building for
19 approximately 37 minutes. Government's Exhibit 708. And the
20 evidence at large in this case establishes that. The parties
21 do not, and could not, reasonably dispute that the Capitol
22 building and parts of the Capitol grounds were restricted on
23 January 6. Testimony from United States Capitol Police
24 Captain Sean Patton showed that the innermost parts of the
25 Capitol grounds were barricaded with snow fences, bike racks,

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1 and at points with police lines on January 6th. And the
2 Capitol building itself is restricted to unauthorized -- is
3 restricted from entry by unauthorized persons, and
4 unauthorized members of the public must go through security
5 before entering the building. Mr. Brock was not authorized
6 to enter the U.S. Capitol building on January 6th.

7 Second, Mr. Brock did so knowingly. It is
8 reasonable that he would have observed the toppled
9 barricades, including snow fences, bike racks, and the broken
10 police lines that were protecting the perimeter of the
11 Capitol grounds on January 6th as he approached the building.
12 Those were in place early on the morning of January 6th.
13 Ultimately, they were breached by the thousands of rioters
14 who came to the Capitol. Mr. Brock was part of that mob and
15 as he proceeded to the Capitol, there's no question that he
16 would have observed those breached perimeters, including snow
17 fences, bike racks, and the like. And indeed, he was then
18 part of the mob that was stopped for several minutes by a
19 police line at the Lower West Terrace, before that mob broke
20 through and continued to the Capitol building. Moreover,
21 once Mr. Brock reached the Capitol building, he entered
22 through doors that had been forced open, that were flanked by
23 windows that had been broken, broken out completely in some
24 instances, and there were other demonstrators entering
25 through the broken glass windows on either side of him as he

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1 entered through the door that had also been broken open. The
2 evidence shows that he would have observed rioters entering
3 through those broken glass windows as he ascended to the
4 Senate Wing Doors, since rioters first broke the windows
5 approximately 11 minutes before Mr. Brock entered the
6 building, and rioters are shown to have come through those
7 windows shortly before and as Mr. Brock entered the building.
8 Mr. Brock then remained in the Capitol for some time after
9 seeing officers guarding the East Rotunda doors, this is in a
10 later video exhibit, and those doors were flanked or included
11 broken windows and he observed rioters attempting to break
12 through to enter with police standing there to try to prevent
13 them from doing so at those East Rotunda doors. So all of
14 this evidence, taken together, is sufficient to prove that
15 Mr. Brock knowingly, and without authority, entered the
16 Capitol grounds and building which were restricted.

17 Hence, I find Mr. Brock guilty on Count Two,
18 entering or remaining in a restricted building or grounds,
19 beyond a reasonable doubt.

20 Count Three. Disorderly or disruptive conduct in a
21 restricted building. This is Title 18 of the U.S. Code
22 1752(a)(2). Count Three charges Mr. Brock with disorderly or
23 disruptive conduct in a restricted building or grounds. To
24 find him guilty, the Government must prove each of the
25 following elements beyond a reasonable doubt:

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1 First, that he engaged in disorderly or disruptive
2 conduct in, or in proximity to, any restricted building;

3 Second, that he did so knowingly, and with the
4 intent to impede or disrupt the orderly conduct of Government
5 business or official functions; and

6 Third, that his conduct in fact impeded or
7 disrupted the orderly conduct of government business or
8 official functions.

9 First, Mr. Brock engaged in disorderly or
10 disruptive conduct in, or in proximity to, any restricted
11 building. For the reasons discussed with respect to Count
12 Two, the Government has proved that the defendant's actions
13 in the Capitol took place in a "restricted building or
14 grounds." The terms "disorderly" and "disruptive" are not
15 defined in the statute and are given their plain meanings.
16 "Disorderly" conduct is that which "tends to disturb the
17 public peace, offend public morals, or undermine public
18 safety." That comes from the definition of disorderly in
19 *Black's Law Dictionary*, 9th Edition, 2009. Examples of this
20 conduct that have been included in jury instructions in other
21 January 6th cases include when a person acts in such a manner
22 as to cause another person to be in reasonable fear of harm,
23 uses words likely to produce violence on the part of others,
24 is unreasonably loud and disruptive under the circumstances,
25 or interferes with another person by jostling against or

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1 unnecessarily crowding that person. Conduct is "disruptive"
2 if it interrupts an event, activity, or the normal course of
3 process. That's the *Redbook*, Instruction 6.643.

4 "Disruptive" is thus a pretty low bar --
5 particularly in the context of January 6th, when, in fact,
6 there was a huge amount of disruption to the proceedings of
7 Congress. In fact, one judge in this District has found
8 that, "[e]ven mere presence in an unlawful mob or riot is
9 both (1) 'disorderly' in the sense that it furthers the mob's
10 'disturb[ing] the public peace' and (2) 'disruptive' insofar
11 as it disturbs the normal and peaceful condition of the
12 Capitol grounds and buildings, its official proceedings, and
13 the safety of its lawful occupants." That comes from *United*
14 *States v. Rivera*, which I think I've cited before, the
15 specific jump cite is *5.

16 This conclusion -- that mere presence in a mob
17 rises to the level of disorderly or disruptive -- makes sense
18 because of the nature of a mob, particularly the mob we're
19 considering with respect to January 6th, 2021. A mob, like
20 the one on January 6th, is made up of individual members, and
21 each individual member increases its power and its disruptive
22 force. As Judge Kollar-Kotelly explained in the *Rivera* case,
23 "Just as heavy rains cause a flood in a field, each
24 individual raindrop itself contributes to that flood. Only
25 when all of the floodwaters subside is order restored to the

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1 field." That's from the same jump cite at *5.

2 Even if mere presence wasn't enough, Mr. Brock
3 actually did more than just be present in the Capitol. He
4 traveled throughout the Capitol to many different locations,
5 wandering about, including going to some sensitive areas, one
6 of which was the Senate floor itself. And that in itself
7 would disrupt the proceedings. His presence on the Senate
8 floor ensured that the certification continued to be
9 disrupted because certain parts of the proceedings had to
10 take place on the Senate floor. He also carried flex cuffs,
11 he yelled, which would be construed and considered as
12 unreasonably loud, one way that behavior may be disorderly,
13 and that took place on the Senate floor, adding a further
14 element of chaos and disruption to the events in the Capitol.

15 Mr. Brock engaged in disorderly and disruptive
16 conduct knowingly, and with the intent to impede or disrupt
17 the orderly conduct of government business or official
18 functions. As to "knowingly," Mr. Brock could look around
19 and realize that he was part of a mob. The evidence shows
20 that he knew that Congress was certifying the election that
21 day, a proceeding which would not be open to the public, and
22 that he was not allowed on the Senate floor -- for example,
23 at one point he tried to use keys, we don't know where the
24 keys came from, but he tried to use keys to open a locked
25 door labeled "United States Senate." Although he didn't know

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1 it, people will be familiar with that door because the video
2 that has been shown not only during this trial but frequently
3 in the public media is the door through which the Vice
4 President was escorted downstairs as he fled from the Senate
5 Chamber. At one point, Mr. Brock observed Sergeant
6 Timberlake in an altercation with other rioters. Although he
7 was not involved in that altercation -- and in fact the
8 evidence shows that he tried to calm the protesters -- he
9 nevertheless continued to walk through the Capitol with full
10 knowledge that law enforcement and the protesters were
11 clashing at various points. Thus, I find that he acted
12 knowingly and with full awareness of the consequences of his
13 decisions.

14 For many of the same reasons, I also find that
15 Mr. Brock acted "with the intent to impede or disrupt the
16 orderly conduct of government business or official
17 functions." While the language is not identical, that
18 language coming from this provision of the 1752(a)(2), it's
19 not identical to the language relevant to Count One, a
20 finding that Mr. Brock acted with "intent to obstruct or
21 impede an official proceeding" as required in Count One under
22 Section 1512(c) would, in this case, necessarily mean that he
23 also had intent to disrupt orderly government business for
24 purposes of Count Three. The certification was both an
25 "official proceeding" -- as required by Section 1512 -- and

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1 an instance of "orderly conduct of government business or
2 official functions," as required by Count Three. I
3 accordingly find that the Government has proven this element
4 beyond a reasonable doubt.

5 Finally, Mr. Brock's conduct in fact impeded or
6 disrupted the orderly conduct of government business or
7 official functions. As discussed in the discussion of Count
8 One, the certification -- an official government function --
9 was in fact impeded or disrupted. Simply by being in the
10 mob, Mr. Brock's conduct assisted in disrupting the
11 certification. But even further, his presence on the Senate
12 floor necessarily disrupted the certification -- had the
13 protesters, Mr. Brock included, cleared the Senate floor and
14 the Capitol building, the certification would have continued.
15 Which it did, but only much, much later in the day on
16 January 6th; indeed, late in the evening. Hence, I find that
17 his conduct did in fact impede or disrupt the orderly conduct
18 of government business or official functions on that day.

19 Hence, I find Mr. Brock guilty on Count Three,
20 disorderly or disruptive conduct in a restricted building,
21 and I find that beyond a reasonable doubt.

22 Count Four, which charges Mr. Brock with entering
23 and remaining on the floor of Congress in violation of Title
24 40 of the U.S. Code, Section 5104(e)(2)(A). To find him
25 guilty on this count, the Government must prove two elements

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1 beyond a reasonable doubt:

2 First, that he entered or remained on the floor of
3 a House of Congress without authorization to do so; and

4 Second, that he acted willfully and knowingly.

5 First, Mr. Brock entered or remained on the floor
6 of a House of Congress without authorization to do so. The
7 Government has proven this beyond a reasonable doubt -- video
8 evidence shows him on the Senate floor, and he was not
9 authorized to be there.

10 Second, Mr. Brock acted willfully and knowingly.
11 As discussed earlier, Mr. Brock certainly knew that he was on
12 the Senate floor. Indeed, he identifies the Vice President's
13 chair which is where the Vice President sits when he is
14 presiding over the certification in the Senate, and at one
15 point, he sees a sign on a door to the floor labeled United
16 States Senate.

17 The evidence also supports a finding Mr. Brock
18 acted "willfully." "Willfully" requires the intent to do
19 something that the law forbids, that is, to disobey or
20 disregard the law. As discussed at length in Count One, his
21 Facebook posts leading up to the January 6th events suggest
22 that he was prepared to break the law to achieve his goals.
23 While those messages were all hypotheticals, Mr. Brock's
24 conduct on January 6th confirms that he knew he was not
25 authorized to be on the Senate floor. He passed by police

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1 while walking through the Capitol, including police guarding
2 broken windows in the East Rotunda doors, and on the Senate
3 floor, he yelled about the group's mission in coming to the
4 Capitol: To stop the alleged stealing of the 2020 election,
5 a mission he indicated in his Facebook messages he knew may
6 have to happen with force and illegally. At one point, he
7 uses keys to try to gain entry to a locked door clearly
8 leading to the Senate floor. Given the context of
9 January 6th and the scenes he walked by on his way into and
10 around the Capitol, it is unfathomable that Brock believed
11 that he was authorized to be on the Senate floor. Thus, I
12 find that Mr. Brock entered and remained on the Senate floor
13 willfully.

14 Hence, I find him guilty on Count Four, entering
15 and remaining on the floor of Congress, beyond a reasonable
16 doubt.

17 Count Five charges Mr. Brock with disorderly or
18 disruptive conduct in a Capitol building, that's in violation
19 of Title 40 of the U.S. Code, Section 5104(e)(2)(D). To find
20 him guilty of this offense, the Government must prove three
21 elements beyond a reasonable doubt:

22 Number one, that he engaged in disorderly or
23 disruptive conduct in any of the United States Capitol
24 buildings;

25 Number two, that he did so with the intent to

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1 impede, disrupt, or disturb the orderly conduct of a session
2 of Congress or either House of Congress;

3 And number three, that he acted willfully and
4 knowingly.

5 For the reasons already discussed, Mr. Brock's
6 "mere presence in an unlawful mob or riot," and specifically
7 the mob at and in the Capitol on January 6th, was disorderly
8 and disruptive. And that's consistent with the *United States*
9 *v. Rivera* and I've cited before. Further, I've already
10 concluded that his specific actions once inside the Capitol
11 building were disruptive.

12 Second, Mr. Brock did so with the intent to impede,
13 disrupt, or disturb the orderly conduct of a session of
14 Congress or either House of Congress. According to a
15 stipulation of the parties, on January 6th, "a joint session
16 of Congress was convened to fulfill its constitutional and
17 statutory responsibilities to count the Electoral College
18 votes" and declare the winner of the 2020 Presidential
19 election. That's Government's Exhibit 702, paragraph 4. In
20 relation to Counts One and Three, I've concluded that
21 Mr. Brock acted with intent to obstruct or impede an official
22 proceeding, and with the intent to impede or disrupt the
23 orderly conduct of government business or official functions.
24 Again, that was his clear purpose as indicated in both his
25 pre-January 6th statements and his conduct on January 6th.

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1 For the reasons addressed in relation to those counts, I find
2 that Mr. Brock's conduct assisted in the mob's disruption of
3 the joint session of Congress convened to certify Electoral
4 College votes. Accordingly, I conclude that Mr. Brock acted
5 with the intent to disrupt the orderly conduct of a session
6 of Congress.

7 Third, Mr. Brock acted willfully and knowingly.
8 For the reasons given in relation to Count One, I have
9 concluded that Mr. Brock obstructed an official proceeding --
10 the certification of Electoral College votes in a Joint
11 Session of Congress -- and that he did so "knowingly" and
12 "corruptly." Courts in this district have defined the term
13 "corruptly" to include acting with "consciousness of
14 wrongdoing" or "improper purpose." One such case is *United*
15 *States v. Puma* that I have cited before, and that's a jump
16 cite at *10. As discussed in reference to Count Four, a
17 person acts "willfully" if he acts with the intent to do
18 something that the law forbids, that is, to disobey or
19 disregard the law. For the same reasons that I already
20 determined that Mr. Brock obstructed the proceeding
21 "knowingly" and "corruptly" because he acted with an
22 understanding or awareness that what he was doing was wrong,
23 I similarly conclude that he acted "knowingly" and
24 "willfully" with the intent to do something the law forbids.

25 Hence, I find Mr. Brock guilty on Count Five of the

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1 indictment, disorderly conduct in a Capitol building, beyond
2 a reasonable doubt.

3 Lastly, Count Six, which charges the defendant with
4 parading, demonstrating, or picketing in the -- in a Capitol
5 building. To find Mr. Brock guilty of this offense, the
6 Government must prove two elements beyond a reasonable doubt:

7 First, that Mr. Brock paraded, demonstrated or
8 picketed in any of the United States Capitol buildings; and

9 Second, that he acted willfully and knowingly.

10 First, Mr. Brock demonstrated in the U.S. Capitol.
11 The term "demonstrate" in the statute encompasses conduct
12 that would disrupt the orderly business of Congress. See
13 *Bynum v. United States Capitol Police Board*, 93 F.Supp.2d 50,
14 jump cite 58, D.D.C. case from 2000. I've already concluded
15 that Mr. Brock's actions while in the Capitol building
16 obstructed an ongoing Congressional proceeding.

17 Moreover, Mr. Brock's arguments effectively concede
18 that he was "demonstrating" in any colloquial sense of the
19 term. He entered the U.S. Capitol building with a large
20 crowd of individuals who had marched there from a political
21 rally. They were at the Capitol protesting and attempting to
22 stop the certification of Electoral College votes for
23 President Biden, or then President-Elect Biden, or -- as
24 Mr. Brock described in his Facebook posts -- to "stop the
25 steal." Not only as they approached the Capitol, but as many

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1 of them entered the Capitol, including Mr. Brock, they were
2 engaged in a demonstration, both around and in the Capitol
3 building that sought to, and in fact did, disrupt the orderly
4 business of Congress. This was a demonstration in any common
5 understanding of that term.

6 Second, Mr. Brock acted willfully and knowingly.
7 For the reasons already discussed in relation to the prior
8 counts, I conclude that Mr. Brock engaged in this
9 demonstration "knowingly" and "willfully."

10 Hence, I find him guilty on Count Six of the
11 indictment, which is parading, demonstrating, and picketing
12 in a Capitol building, and I find that beyond a reasonable
13 doubt.

14 With that, I have addressed all six of the counts
15 and have found Mr. Brock guilty on each of those counts. And
16 those findings are all based on the evidence of record in
17 this case and on conclusions that I have reached beyond a
18 reasonable doubt.

19 With that, anything from counsel before we set a
20 sentencing date? Anything from the Government?

21 MS. AYERS-PEREZ: No, your Honor.

22 THE COURT: From the defense?

23 MR. BURNHAM: No, your Honor.

24 THE COURT: All right. We need to set a sentencing
25 date, and in this jurisdiction, that's usually about three

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1 months these days because of the number of cases that the
2 probation office is dealing with. So if we go out three
3 months from now, we'll be in February, a month that I have
4 some obligations not only in this building but outside of
5 this building. But Mr. Bradley, what do you see as a
6 possibility?

7 THE CLERK: Judge, if my calculation is right, that
8 falls on February 14th, 2023, February 14th.

9 THE COURT: I think I will be here on that date.
10 It's a double holiday in my family, not only Valentine's Day,
11 and I have another proceeding at 2:00.

12 THE CLERK: That's right.

13 THE COURT: So how's the morning of February 14th
14 sound, first for the Government?

15 MS. AYERS-PEREZ: That works for the Government,
16 your Honor.

17 THE COURT: And Mr. Burnham, for the defense?

18 MR. BURNHAM: Fine, your Honor.

19 THE COURT: All right. Let's do it at -- how about
20 10:30?

21 MR. BURNHAM: Good for the defense.

22 THE COURT: February 14th, 10:30, and we'll need
23 sentencing memos then in advance of that date and if I have
24 them one week in advance on February 7th, that should be
25 sufficient, so sentencing memos are due by February 7th,

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1 2023. All right.

2 The only remaining question for me is then just to
3 address the question of the defendant's status pending
4 sentencing. Is there any request by the Government to change
5 his status; in other words, to change from release under
6 certain conditions?

7 MS. AYERS-PEREZ: There is not, your Honor.

8 THE COURT: All right. Any request from the
9 defense to change any of those conditions?

10 MR. BURNHAM: No, your Honor. I just note for the
11 record that he's done very well and your Honor has stepped
12 him down several times, so --

13 THE COURT: Yes, he has done fine. I think there's
14 been no problems of any consequence under the conditions that
15 he's been subjected to, and I will continue him in that
16 release under conditions and expect him to continue to comply
17 with those conditions and I won't even give all the
18 admonitions that I've given before because I know Mr. Brock
19 will bear those in mind. And you now have a sentencing date
20 on February 14th, it's at 10:30 in the morning, it will be in
21 this courtroom, and you need to be present for that
22 sentencing at that time. All right. With that, anything
23 further today from the Government?

24 MS. AYERS-PEREZ: No, your Honor.

25 THE COURT: And from the defense?

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1 MR. BURNHAM: No, your Honor.

2 THE COURT: All right. I will say to all counsel,
3 thank you for the very excellent presentations. The evidence
4 was presented fully and fairly, the arguments made
5 conscientiously and creatively, and I appreciate that,
6 commend you all for a job well done in presenting the case.
7 Thank you all.

8 MR. BURNHAM: Thank you, your Honor.

9 (Court Adjourned, 10:56 a.m.)
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JODI L. HIBBARD, RPR, CRR, CSR
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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
Official Realtime Court Reporter, in and for the
United States District Court for the Northern
District of New York, DO HEREBY CERTIFY that
pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct
transcript of the stenographically reported
proceedings held in the above-entitled matter and
that the transcript page format is in conformance
with the regulations of the Judicial Conference of
the United States.

Dated this 28th day of November, 2022.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter

JODI L. HIBBARD, RPR, CRR, CSR
(315) 234-8547

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

LARRY BROCK,

Defendant.

Case No. 21-cr-140-JDB

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Larry Brock to 60 months’ incarceration, 36 months’ supervised release, \$2,000 restitution, and the mandatory special assessments (\$100 for Count One, \$25 each for Counts Two and Three, and \$10 each for Counts Four through Six). The calculated guideline range is 57 to 71 months’ incarceration, and the 60-month recommendation is at the low end of that range.

I. INTRODUCTION

The defendant, Larry Brock, participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred police officers, and resulted in more than 2.8 million dollars in

losses.¹

Larry Brock, a retired Lieutenant Colonel in the Air Force, stormed the United States Capitol building on January 6, dressed in tactical gear, and on a mission. In the days and weeks leading up to January 6, Brock grew increasingly angry about the 2020 Presidential Election. Brock proclaimed on Facebook that the election was stolen, and that then President-Elect Joe Biden would not be inaugurated in January 2021. Brock expressed an acute awareness of what was happening on January 6, stating at one point “Congress can stop it on the 6th of January”. Brock bragged to his friends about the tactical gear he was buying in anticipation of January 6, even saying he “preferred outright insurrection at this point.” On January 6, Larry Brock, dressed in combat gear, made his way into one of the most sensitive areas in all of Government – onto the Senate Floor that the Vice President, Senators, and staff had fearfully evacuated minutes earlier – and showcased his leadership skills therein. Brock loudly proclaimed, “THIS IS OUR HOUSE!”, and during a dispute with a fellow rioter sitting in the Vice President’s chair, Brock lectured his fellow rioters that this was an “IO war.”² Brock was part of the mob that halted certification and the peaceful transfer of power on January 6.

The government recommends that the Court sentence Brock to 60 months’ incarceration

¹ As of October 17, 2022, the approximate losses suffered as a result of the siege at the United States Capitol was \$2,881,360.20. That amount reflects, among other things, damage to the United States Capitol building and grounds and certain costs borne by the United States Capitol Police.

² FBI Special Agent John Moore, a lieutenant colonel in the U.S. Army reserve component, explained that “Information operations is a broad term in concept referring to the use of information to shape the battlefield both using information to shape what enemy conventional military units do...” Tr. 11/15/22, 226: 25, 227:1-10.

for his violations of 18 U.S.C. § 1512(c)(2) and 2, 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(A), (D), and (G), which is within the low end of the advisory Guidelines' range of 57 to 71 months, which the government submits is the correct Guidelines calculation. A 60-month sentence reflects the gravity of Brock's conduct, but also acknowledges that, despite his planned violence and threatening conduct, he did not directly engage in violent conduct within the Capitol building.

II. FACTUAL BACKGROUND

A. The January 6, 2021 Attack on the Capitol

The government refers the court to the Complaint and attached Affidavit filed in this case, ECF No. 1 at ¶¶4-10, for a short summary of the January 6, 2021 attack on the United States Capitol by hundreds of rioters, in an effort to disrupt the peaceful transfer of power after the November 3, 2020 presidential election.

B. Larry Brock's Role in the January 6, 2021 Attack on the Capitol

Larry Brock, a retired Lieutenant Colonel in the United States Air Force, participated in the January 6 attack on the Capitol. His crimes are documented through a series of videos including body worn cameras from the Metropolitan Police Department, open-source video, and surveillance footage from inside of the Capitol, as well as numerous incendiary and violent statements on Facebook in the days and weeks leading up to January 6.

Brock's Statements through Facebook Leading Up to January 6

Brock grew increasingly angry about the results of the 2020 Presidential Election, and believed the election had been stolen from then-President Donald Trump. Brock believed that the

Supreme Court would be overturning the election, and when that did not happen, Brock set his sights on the Electoral College certification on January 6 at the U.S. Capitol.

On November 7, 2020, the day most mainstream media outlets called the election for President Biden, Brock posted on Facebook: “A revolution every now and then is a good thing.”

The following day, on November 8, 2020, Brock posted on Facebook: “Biden outperformed Obama? Right! I have said it before and I will say it again. If the President calls, I will answer. #OathKeeper.” On November 9, Brock posted on Facebook: “When we get to the bottom of this conspiracy we need to execute the traitors that are trying to steal the election, and that includes the leaders of the media and social media aiding and abetting the coup plotters.”

On November 13, 2020, Brock posted on Facebook: “I believe the courts will act, but if they don’t, are we willing to see the will of the American people be thwarted? What exactly constitutes supporting and defending the Constitution ... against all enemies, foreign and domestic. Does stealing an election through fraud make one a domestic enemy? If so, what are we prepared to do?”

On December 5, 2020, Brock posted on Facebook: “If SCOTUS³ doesn’t act we have two choices. We can either live in a Communist Country or we can rebel, keep the rightful President in power and demand free and fair elections. #civilwar2021.”

On December 6, 2020, Brock posted the following on Facebook: “Going to get a lot scarier if SCOTUS doesn’t act. No way in hell we should accept this rigged election. We need to restore

³ FBI Agent Moore testified at trial that SCOTUS referred to the Supreme Court of the United States.

the Constitution and the best and shortest way is to go offensive on the Communists that stole it, aka the Democratic Party.”

On December 7, 2020, Brock sent a message to another Facebook user with the screenname Beaf Supreame⁴ stating that “I think SCOTUS needs to see if they don’t act that there will be blood.”

On December 11, 2020, Brock posted the following on Facebook: “It appears as if SCOTUS is going to duck. If so then it will be game on soon. We need ROE, a clear chain of Command ending with President Trump and a master target list.”⁵

On December 18, 2020, Brock engaged in a conversation with Beaf Supreame about the 2020 election, referencing the upcoming Inauguration on January 20, 2021, with Brock saying that he was “ready to go at it”. Beaf Supreame brought up the possibility of an “IO⁶ loss if a cop got hurt.” See Images 1 and 2.

⁴ The FBI is aware of the identity of the friend. He was identified at trial as “Drew” and by his Facebook screenname of “Beaf Supreame”. FBI Agent John Moore testified that “Beaf Supreame” was former special forces in the military.

⁵ Agent Moore testified at trial he believed ROE to be rules of engagement.

⁶ FBI Agent Moore testified at trial as to what an IO war is. He stated that IO means Information Operations, and that Information Operations is a broad concept that is used in the military to denote using information to shape what the enemy does.

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-18 16:32:19 UTC
Body Can you imagine if several hundreds thousand Patriots descended on dc refusing to let Biden be inaugurated

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-18 16:33:14 UTC
Body I do not believe the US military will fire on us

Author Beaf Supreame (Facebook: 725043739)
Sent 2020-12-18 16:33:28 UTC
Body Yeah. Inauguration would be canceled or moved to a secure location

Author Beaf Supreame (Facebook: 725043739)
Sent 2020-12-18 16:33:57 UTC
Body But would be more of a spectacle to delay.

Image 1

Author Beaf Supreame (Facebook: 725043739)
Sent 2020-12-18 16:34:28 UTC
Body And a possible IO loss if a cop got hurt.

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-18 16:35:29 UTC
Body Look dude I am pretty sure I am ready to go at it. I just need numbers with me

Image 2

On December 24, 2020, Brock sent the Facebook message, “I bought myself body armor and a helmet for the civil war that is coming.” That same day, on December 24, 2020, Brock sent the following Facebook message to user Beaf Supreame regarding the election:

Assumption: US Military isn't involved

Objection: Restore the rule of law in the rebellious states, hold a free and fair election in 1 year

Plan of Action if Congress fails to act on 6 January

Main Tasks:

1. Seize all democratic politicians and Biden key staff and select Republicans (Thune and McConnell). Begin interrogations using measures we used on Al Queda to gain evidence on the coup
2. Have General Flynn get in touch with President Trump and have him declare a State of Insurrection exists to provide color of law to our actions
3. Seize national media assets and key personnel. Zuck⁷, Jack⁸, CNN⁹ lead and talking heads, seize WAPO¹⁰ and NYT¹¹ editors. Eliminate them. Media silence except for White House communications
4. Present slate for clean elections to existing congress and make sure they sign.
5. Let the Democratic cities burn. Cut off power and food to all who oppose us.
6. Establish provisional government in rebellious states and representatives we can count on.
7. Cease all foreign aid except for key allies as determined by Trump
8. General pardon for all crimes up to and including murder of those restoring the Constitution and putting down the Democratic Insurrection.

ROE:

1. Do not kill LEO¹² unless necessary. Gas would assist in this if we can get it.
2. Attempt to capture Democrats with knowledge of coup
3. Shoot and destroy enemy communication nodes and key personnel
4. So many sub tasks I can't even imagine them

Later that same day, Brock sent the following message predicting "occupation of the capital (sic)." See Image 3.

⁷ Agent Moore testified at trial he believed Zuck to be Mark Zuckerberg, the CEO of Facebook

⁸ Agent Moore testified at trial he believed Jack to be Jack Dorsey, then CEO of Twitter

⁹ Agent Moore testified at trial he believed CNN to be the Cable News Network

¹⁰ Agent Moore testified at trial he believed WAPO to be the Washington Post

¹¹ Agent Moore testified at trial he believed NYT to be the New York Times

¹² Agent Moore testified at trial he believed LEO to be law enforcement officers.

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-24 23:51:06 UTC
Body Yes but you know people trained to do larger stuff. My prediction is occupation of capital abs capture of some assets is easy. If trump didn't back the "peaceful protest" of veterans to restore the Republic we lose

Image 3

On December 26, 2020, Brock messaged another Facebook user with the initials B.S. and noted, "...Congress can stop it on the 6th of January[.] The Supreme Court is staying out of it[.] Those are the last two peaceful options." See Image 4.

Author B [REDACTED] S [REDACTED] (Facebook: 618738863)
Sent 2020-12-26 16:07:45 UTC
Body I'm not thinking that. At all.
I just believe that a civil war is the last resource, and no one should wish for it.
I'm sure there are more civilized ways to fight.

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-26 16:11:01 UTC
Body Agree. Congress can stop it on the 6th of January

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-26 16:11:15 UTC
Body The Supreme Court is staying out of it

Author Torch Flyer (Facebook: 100015060977787)
Sent 2020-12-26 16:11:29 UTC
Body Those are the last two peaceful options

Image 4

On December 27, Brock again messaged “Beaf Supreame”, this time discussing booking a flight to Washington, D.C. on January 5, and whether people would riot. Brock stated to “Beaf Supreame”: “I prefer outright insurrection at this point”.

On January 1, 2021, Brock wrote on Facebook, “Help is on the way. 6 Jan 2021. #MAGA #StormtheCastle.

On January 3, Brock wrote on Facebook, “Biden won’t be inaugurated. We will ensure that on the 6th”.

On January 5, Brock wrote on Facebook, “Our second American Revolution begins in less than 2 days”.

Approach to the Capitol

Brock traveled to Washington, D.C. from his home near Dallas, Texas on January 5, 2021 . On January 6, he first went to the “Stop the Steal” rally in Washington, D.C. where he was amongst a crowd of people while wearing a tactical vest. *See Image 5 below.*



Image 5

Brock then walked down Pennsylvania Avenue, still wearing his tactical vest, with a helmet attached to his vest. *See* Image 6. Despite Brock claiming to the Probation Officer during the interview for his Presentence Report (“PSR”) that he brought the helmet and tactical vest due to threats from Antifa, Brock does not wear his helmet during the Stop the Steal rally or in the march to the Capitol. *See* Images 5 and 6



Image 6

Brock then approached the U.S. Capitol building and climbed the stairs next to the scaffolding on the west side of the building. *See Image 7.* The scaffolding was located at the western face of the Capitol building. Brock is circled in red. Brock has donned his helmet at this point, while climbing the overrun stairs outside the Capitol building, preparing to go inside. Surrounding Brock were other rioters, climbing scaffolding that was present as construction crews prepared a temporary stage for the Presidential Inauguration, which was scheduled to take place on January 20. *See Image 7.*



Image 7

After making his way up the steps on the west side of the Capitol, Brock eventually made his way through the Senate Wing Doors at approximately 2:24 p.m. on January 6, approximately 12 minutes after the Senate Wing Doors were initially breached. *See Image 8.*

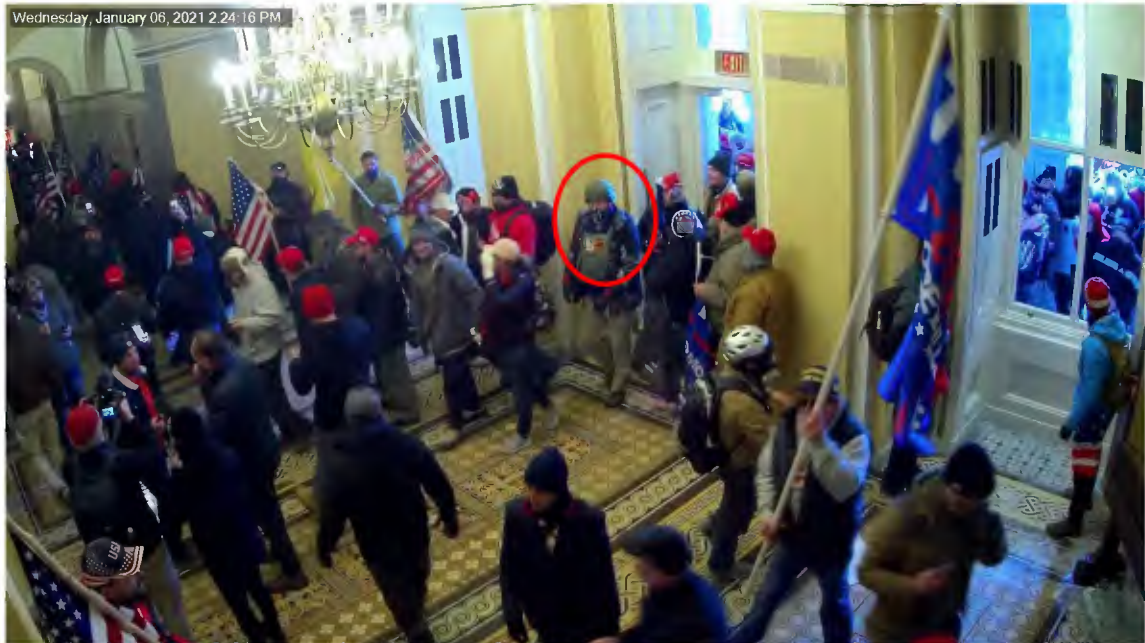


Image 8

Brock made his way outside the East Rotunda Doors, where he witnessed overrun U.S. Capitol Police Officers trying to keep the door closed from the impending mob outside. The windows in the East Rotunda Doors were shattered, which was visible from where Brock was standing. Despite this, Brock continued on throughout the Capitol building. See Image 9.

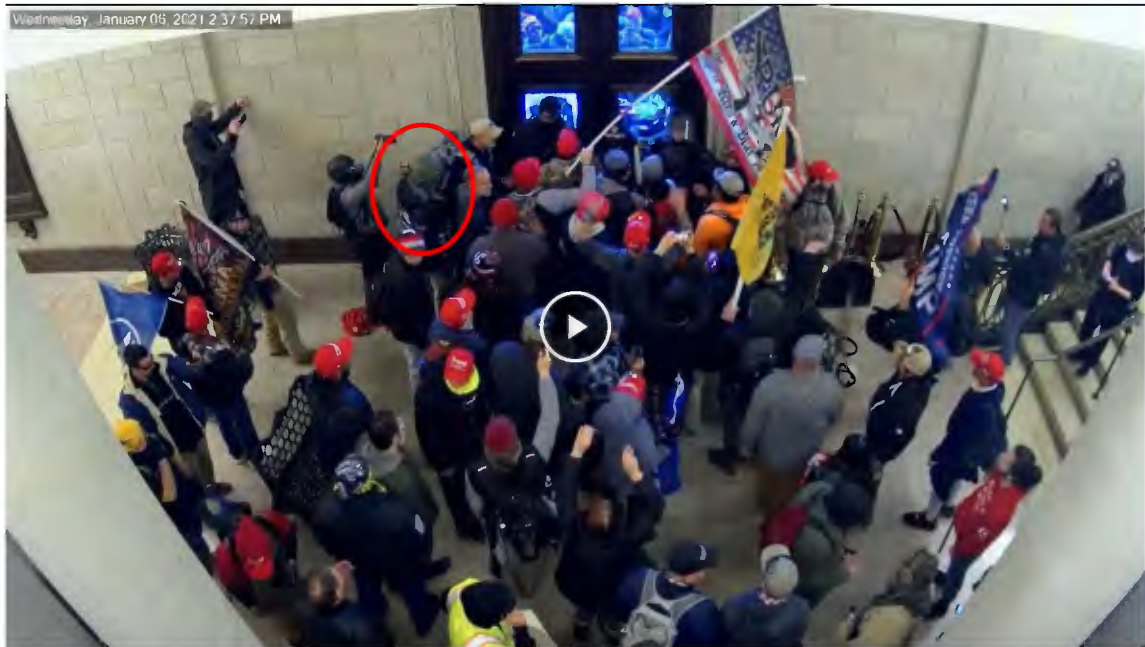


Image 9

Brock then headed towards the East Rotunda stairs, where he would eventually make his way up to the third floor of the Capitol building. On the ground near the stairs Brock discovered a pair of flex-cuffs that had been discarded. Brock picked up the flex-cuffs, and headed upstairs while carrying the flex-cuffs. *See Image 10.*



Image 10

Brock, while still holding the flex-cuffs, walked up the East Rotunda stairs, where he made his way outside the Senate Gallery. While outside the Senate Gallery, Brock witnessed other rioters engaging in violence with U.S. Capitol Police Officers who were trying to shut the doors to the Gallery. Although Brock intervened in the violence, he then went into the Senate Gallery along with numerous other rioters. One of the officers present, Sergeant Nairobi Timberlake, stated that Brock had a “command presence” in the group and described how Brock was vocal with those around him. Tr. 11/14/2022, 166:1-6. Sgt. Timberlake also stated that Brock did not have the flex-cuffs out where he could see them, nor did Brock give the flex-cuffs to him. Tr. 11/14/2022, 166:15-23 *See Image 11.*



Image 11

While in the Senate Gallery, Brock again displayed his command presence and leadership. Brock shouted at the other rioters, and gave orders not to destroy anything. Brock had commanded the attention of many other rioters, who stopped what they were doing to listen to Brock. Once Brock was not in the presence of law enforcement, he took the flex cuffs back out and held them in his right hand. *See Image 12.*



Image 12

After leaving the Senate Gallery, Brock went downstairs and attempted to enter the Senate Floor. This was the same door that Vice President Pence had exited from 21 minutes prior. Brock approached the door with what appeared to be a set of keys and attempted to unlock the door. See Images 13 (Vice President Pence circled in blue) and 14.



Image 13



Image 14

After he failed to unlock the door, Brock went around to the other side of the Senate,

where he then entered onto the Senate Floor. Brock was let on to the Senate Floor by another rioter opening the locked door from the inside. Once on the Senate Floor, Brock shouted at his fellow rioters saying, “THIS IS OUR HOUSE” and “This is an IO War. We can’t lose the IO War.” See Image 15.



Image 15

Brock spent approximately 8 minutes on the Senate Floor, in which time he rifled through paperwork on Senator’s desks. At one point, Brock shouted to other rioters to get out of the Vice President’s chair. This was consistent with Brock’s stated overall mission on January 6, which was intelligence gathering to stop the certification and the transfer of power. After leaving the Senate Floor, Brock was encountered by a Metropolitan Police Department (MPD) Officer. The Officer, Maggie-May Humphrey, was equipped with a Wearable Video System (WVS) or bodycam, which captured Brock ignoring the officers attempting to direct him out of the building and their brief

pursuit of Brock before returning to their post. Brock eventually exited the U.S. Capitol via the Parliamentary Doors at 3:02 p.m. Before exiting, Brock briefly breaks up a confrontation between another rioter and a law enforcement officer.

POST-JANUARY 6 STATEMENTS

On January 8, 2021 the New Yorker published an article about Brock's involvement on January 6. Ronan Farrow, An Air Force Combat Veteran Breached the Senate, The New Yorker (Jan. 8 2021) <https://www.newyorker.com/news/news-desk/an-air-force-combat-veteran-breached-the-senate> Per the article, Brock claimed that he saw no violence on January 6, and assumed he was welcome to enter the building. *Id.* Brock is quoted in the article in reference to the flex cuffs he picked up outside of the Rotunda: "I wish I had not picked those up... my thought process there was I would pick them up and give them to an officer when I see one...I didn't do that because I had put them in my coat, and I honestly forgot about them."¹³ *Id.*

THE CHARGES AND TRIAL

On June 23, 2021, a federal grand jury returned a superseding indictment charging Larry Brock with six counts, including, Obstruction of an Official Proceeding in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One), Entering and Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(1) (Count Two), Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) (Count Three), Entering and Remaining on the Floor of Congress in violation of 40 U.S.C. § 5104(e)(2)(A) (Count Four),

¹³ Brock is observed via U.S. Capitol Police CCTV recovering the discarded flex cuffs from the floor of the Rotunda Interior at approximately 2:39 pm, and can be seen holding them almost continuously after that point. (Tr. Ex. 418)

Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Five), and Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Six). On, November 16, 2022, Larry Brock was convicted of those offenses following a three-day bench trial.

III. STATUTORY PENALTIES

Larry Brock now faces sentencing on Obstruction of an Official Proceeding and Aiding and Abetting in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One), Entering and Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(1) (Count Two), Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) (Count Three), Entering and Remaining on the Floor of Congress in violation of 40 U.S.C. § 5104(e)(2)(A) (Count Four), Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Five), and Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Six).

As noted by the Presentence Report issued by the U.S. Probation Office, the defendant faces up to 20 years of imprisonment, a term of supervised release of not more than three years, a fine up to \$250,000, and a mandatory special assessment of \$100 for Count One; up to one year of imprisonment, a term of supervised release of not more than one year, a fine up to \$100,000, and a mandatory special assessment of \$25 for each of Counts Two and Three; and up to six months of imprisonment, a fine up to \$5,000, and a mandatory special assessment of \$10 for each of Counts Four through Six.

IV. THE SENTENCING GUIDELINES AND GUIDELINES ANALYSIS

As the Supreme Court has instructed, the Court “should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *United States v. Gall*, 552 U.S. 38, 49 (2007).

The Government agrees with the Sentencing Guidelines calculation set forth in the Pre-Sentence Report (PSR) and the calculated guidelines range of 57 – 71 months. PSR ¶ 117. However, the PSR mistakenly fails to include a full Guidelines analysis for all three Counts to which the Guidelines apply—Counts One, Two, and Three.¹⁴ See PSR ¶¶ 46-60. Sections 1B1.1(a)(1)-(3) describe the steps a sentencing court must follow to determine the Guidelines range, which include determining the applicable Guideline, determining the base offense level, applying appropriate special offense characteristics, and applying any applicable Chapter 3 adjustments. Under U.S.S.G. § 1B1.1(a)(4), the applicable Guidelines analysis as set out in U.S.S.G. § 1B1.1(a)(1)-(3) must be “repeat[ed]” for “each count.” Only after the Guidelines analysis as set out in U.S.S.G. § 1B1.1(a)(1)-(3) is performed, is it appropriate to “[a]pply” the grouping analysis as set out in Chapter 3. The PSR does not follow these steps. It concludes (*see* PSR ¶ 49) that Counts One, Two, and Three group—a conclusion with which the government agrees—but does not set forth the Guidelines calculation separated for each count as required under U.S.S.G. § 1B1.1(a)(4). That Guidelines analysis is as follows:

Count One: 18 U.S.C. § 1512(c)(2) and (2)¹⁵

¹⁴ As the PSR properly notes, pursuant to U.S.S.G. § 1B1.9, the Guidelines do not apply to counts of conviction that are Class B misdemeanors, and so do not apply to Counts Four, Five, or Six here. PSR ¶ 48.

¹⁵ For the aiding and abetting charge (18 U.S.C. § 2), the offense level would be the same as that for the underlying offense. *See* U.S.S.G. § 2X2.1(a). Accordingly, that analysis mirrors the

U.S.S.G. § 2J1.2(a)	Base Offense Level	14
U.S.S.G. § 2J1.2(b)(1)(B)	Causing or Threatening to Cause Physical Injury or Property Damage ¹⁶	+8
U.S.S.G. § 2J1.2(b)(2)	Resulted in Substantial Interference ¹⁷	+3

analysis for 18 U.S.C. § 1512(c)(2) here.

¹⁶ The enhancement in U.S.S.G. § 2J1.2(b)(1)(B) applies where “the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice.” For purposes of this enhancement, the “administration of justice” is synonymous with “official proceeding” as defined in 18 U.S.C. § 1515(a)(1), which in the Capitol riot cases refers to a “proceeding before the Congress, § 1515(a)(1)(B).

There are multiple theories for application of this offense characteristic based on U.S.S.G. § 1B1.3 which encompasses both Brock’s own acts or omissions and those whom he aided, abetted, counseled, commanded, induced, procured, or willfully caused. U.S.S.G. § 1B1.3(a)(1)(A). It also includes “all harm that resulted” from the defendant’s acts or the acts of others engaged in jointly undertaken criminal activity with the defendant. U.S.S.G. § 1B1.3(a)(1)(B). As discussed above, Brock used extremely dangerous and violent rhetoric in the days and weeks leading up to January 6. In November 2020, Brock posted on Facebook “When we get to the bottom of this conspiracy we need to execute the traitors....” In December 2020, he posted to Facebook using the hashtag, “#civilwar 2021.” Also in December 2020, Brock sent a Facebook message to a friend, which showed that he viewed January 6 to be a military-style operation, listing “Task[s]” that included “Seiz[ing] all Democratic politicians and Biden key staff and select Republicans (Thune and McConnell). Begin interrogations using measures we used on Al Queda....”. The message also listed “ROE,” or rules of engagement, including “Do not kill LEO (law enforcement officers) *unless necessary*” (emphasis added), and “Attempt to capture Democrats with knowledge of the coup.” Although Brock did not engage in violent acts while inside the Capitol building (to the government’s knowledge, and in fact stopped some violence from occurring inside the Capitol, he still went to one of the most secure areas inside the Capitol building – the Senate Floor –minutes after Vice President Pence had been ushered out of the Senate. Multiple people followed Brock inside the Senate. Brock marched inside the Capitol building to various locations, while holding flex cuffs, dressed in a helmet and military style tactical vest. This was extremely threatening behavior meriting application of the § 2J1.2(b)(1)(B) enhancement, as also noted by Probation. PSR ¶ 52.

¹⁷ The term “substantial interference with the administration of justice” as defined in the commentary, “include[s] . . . the unnecessary expenditure of substantial governmental or court resources.” See U.S.S.G. § 2J1.2(b)(2), Application Note 1. Brock was found guilty of corruptly obstructing and impeding an official proceeding, namely the certification of the Electoral College vote count. The riot resulted in evacuations, vote count delays, officer injuries, and more than 2.8 million dollars in losses. As described herein, law enforcement from all over the D.C. metropolitan area responded to assist in protecting the Capitol from the rioters.

	Total	25
<u>Count Two: 18 U.S.C. § 1752(a)(1)</u>		
U.S.S.G. § 2B2.3 (a)	Base Offense Level	4
U.S.S.G. § 2B2.3(b)(1)(A)	Trespass occurred at any restricted building or grounds ¹⁸	+2
<i>Cross Reference</i>		
U.S.S.G. § 2B2.3(c)(1)/2X1.1	Intent to Commit a Felony ¹⁹	17
	Total	17
<u>Count Three: 18 U.S.C. § 1752(a)(2)</u>		
U.S.S.G. § 2A2.4(a)	Base Offense Level	10
	Total	10
Combined Offense Level		25
Acceptance of responsibility (U.S.S.G. §3E1.1) ²⁰		<u>0</u>
Total Offense Level:		25

¹⁸ Section 2B2.3 gives “restricted building or grounds” the meaning that the phrase is given in 18 U.S.C. § 1752. U.S.S.G. § §2B2.3 cmt. n.1.

¹⁹ Since the Section 1752(a)(1) offense was committed with an intent to commit another felony (18 U.S.C. § 1512), the base offense level of that felony applies to the 1752(a)(1) charge, pursuant to U.S.S.G. § 2B2.3(c)(1) and § 2X1.

²⁰ Brock contested essential factual elements of guilt at trial, such as denying that he went to the Capitol to stop the certification; denying that he dressed in tactical gear to support his mission to storm the Capitol and stop the certification; and denying that he picked up and held on to the flex-cuffs in case he needed them for a member of Congress, or to otherwise support his goal of stopping the certification. Accordingly, the adjustments for acceptance of responsibility in U.S.S.G. §§ 3E1.1(a) and (b) should not apply. U.S.S.G. §§ 3E1.1 Application Note 2; U.S.S.G. § 3E1.1(b).

Counts One through Three group because all involve the same victim: Congress. U.S.S.G. § 3D1.2(a) and (b). The offense level for that Group is the level “for the most serious of the counts comprising the Group, i.e., the highest offense level of the counts in the Group.” U.S.S.G. § 3D1.3(a). Since Counts One and Two have the highest offense levels for any count in the group (both are 25), the combined offense level for the group is 25. And because acceptance of responsibility points are not available in the instant case, the total offense level remains 25. This is the same as the Probation Officer’s estimated total offense level of 25. PSR ¶ 60.

The U.S. Probation Office calculated the defendant’s criminal history as category I, which is not disputed. PSR ¶ 63. Accordingly, based on the government’s calculation of the defendant’s total adjusted offense level of 25, Brock’s Guidelines imprisonment range is 57 to 71 months’ imprisonment.

V. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(A)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). As described below, on balance, the Section 3553(a) factors weigh in favor of a lengthy term of incarceration.

A. Nature and Circumstances of the Offense

As shown in Section II(B) of this memorandum, Larry Brock’s felonious conduct on January 6, 2021 was part of a massive riot that almost succeeded in preventing the certification vote from being carried out, frustrating the peaceful transition of Presidential power, and throwing the United States into a Constitutional crisis. The nature and circumstances of Larry Brock’s offenses were of the utmost seriousness, and fully support the government’s recommended sentence of 60 months’ incarceration, 36 months’ supervised release, and \$2,000 restitution,.

B. The History and Characteristics of the Defendant

Brock is a former Lieutenant Colonel in the United States Air Force. PSR ¶ 25. Engaged in a significant amount of violent rhetoric leading up to January 6. On May 18, 2018, Brock was terminated from his employment as a sales leader at CAE in Fort Worth, Texas. PSR ¶ 100. In a termination letter from May 18, 2018, it was stated that Brock was terminated because he had stated to other employees that he “had not killed anyone for a while” and because of comments by Brock regarding shooting members of a particular religion and/or race. CAE noted that Brock had already received three verbal warnings and two written warnings prior to termination about this kind of rhetoric.

On January 13, 2015, Brock received six months of deferred adjudication probation for a misdemeanor disorderly conduct charge out of Montana. PSR ¶ 62.

The defendant’s history and characteristics, including his history of violent rhetoric and disorderly conduct, weigh in favor of a lengthy term of incarceration.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

As with the nature and circumstances of the offense, this factor supports a sentence of incarceration. Larry Brock’s criminal conduct, on January 6 was extreme and dangerous. Brock had disturbing and violent rhetoric leading up to January 6, and he acted on that rhetoric by buying tactical gear, flying to Washington, D.C., storming the U.S. Capitol building, making his way into the Senate Chamber twice, rifling through paperwork belonging to Senators, and ignoring law enforcement commands to leave. His behavior helped to delay the certification and interfere with the peaceful transition of power, as was his intent. This was the epitome of disrespect for the law.

D. The Need for the Sentence to Afford Adequate Deterrence

General Deterrence

A significant sentence is needed “to afford adequate deterrence to criminal conduct” by others. 18 U.S.C. § 3553(a)(2)(B). The need to deter others is especially strong in cases involving domestic terrorism, which the breach of the Capitol certainly was.²¹ The demands of general deterrence weigh strongly in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol.

Specific Deterrence

The need for the sentence to provide specific deterrence to this particular defendant also weighs heavily in favor of a lengthy term of incarceration.

First, although Brock has a criminal history category of I, his prior offense of disorderly conduct, as well as violent and dangerous rhetoric, shows a clear pattern of dangerous behavior. *See* Section VI(B) *supra*. Second, Brock has yet to express remorse for his actions. Brock stated in his PSR interview that he lost his job over a “peaceful protest”. PSR ¶ 37. Brock stated this after having walked through broken doors, around broken windows, seeing the Senate Chamber broken into, witnessing rioters chanting “Nancy, Nancy” over and over again, and hearing from law enforcement officers about the horrors of that day. Third, Brock’s behavior was disturbingly premediated. Weeks after sending messages about “[s]eiz[ing]” and “interrogat[ing]” politicians, including Senators Thune and McConnell, Brock showed up on the Senate floor in tactical gear with flex-cuffs (which he made sure to pick up off the floor on his way upstairs to the Senate

²¹ *See* 18 U.S.C. § 2331(5) (defining “domestic terrorism”).

Gallery), rifling through Senator's papers. Had the Senate Gallery not been emptied minutes before, Brock could have come face-to-face with the politicians he had fantasized about seizing and interrogating. Even the seemingly more altruistic parts of Brock's behavior fit into his professed plans. As noted above, he asserted "Do not kill LEO *unless necessary*" (emphasis added), and during an exchange with a friend, during which Brock asked "Can you imagine if several hundred thousand Patriots descended on dc refusing to let Biden be inaugurated[?]", his friend warned that it could be "a possible IO loss if a cop got hurt." Accordingly, even those moments where Brock avoided or discouraged direct physical confrontation with police (whom he did not have to engage with because they were so vastly outnumbered) served the goals of Brock's planned IO war, which was focused on preventing the certification and peaceful transfer of presidential power.

E. The Importance of the Guidelines

"The Guidelines as written reflect the fact that the Sentencing Commission examined tens of thousands of sentences and worked with the help of many others in the law enforcement community over a long period of time in an effort to fulfill [its] statutory mandate." *Rita v. United States*, 551 U.S. 338, 349 (2007). As required by Congress, the Commission has "'modif[ied] and adjust[ed] past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like.'" *Kimbrough v. United States*, 552 U.S. 85, 96 (2007) (quoting *Rita*, 551 U.S. at 349); 28 U.S.C. § 994(m). In so doing, the Commission "has the capacity courts lack to base its determinations on empirical data and national experience, guided by professional staff with appropriate expertise," and "to formulate and constantly refine national

sentencing standards.” *Kimbrough*, 552 U.S. at 108 (cleaned up). Accordingly, courts must give “respectful consideration to the Guidelines.” *Id.* at 101.

F. Unwarranted Sentencing Disparities

Section 3553(a)(6) of Title 18 directs a sentencing court to “consider ... the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” So long as the sentencing court “correctly calculate[s] and carefully review[s] the Guidelines range, [it] necessarily [gives] significant weight and consideration to the need to avoid unwarranted disparities” because “avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges.” *Gall v. United States*, 552 U.S. 38, 54 (2007). In short, “the Sentencing Guidelines are themselves an anti-disparity formula.” *United States v. Blagcjevich*, 854 F.3d 918, 921 (7th Cir. 2017); *accord* *United States v. Sanchez*, 989 F.3d 523, 540 (7th Cir. 2021). Consequently, a sentence within the Guidelines range will ordinarily not result in an unwarranted disparity. *See United States v. Smocks*, D.D.C. 21-cr-198 (TSC), Sent. Hrg. Tr. at 49 (“as far as disparity goes, ... I am being asked to give a sentence well within the guideline range, and I intend to give a sentence within the guideline range.”) (statement of Judge Chutkan).

Moreover, Section 3553(a)(6) does not limit the sentencing court’s broad discretion “to impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a). After all, the goal of minimizing unwarranted sentencing disparities in Section 3553(a)(6) is “only one of several factors that must be weighted and balanced,” and the degree of weight is “firmly committed to the discretion of the sentencing

judge.” *United States v. Coppola*, 671 F.3d 220, 254 (2d Cir. 2012). The “open-ended” nature of the Section 3553(a) factors means that “different district courts may have distinct sentencing philosophies and may emphasize and weigh the individual § 3553(a) factors differently; and every sentencing decision involves its own set of facts and circumstances regarding the offense and the offender.” *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008). “[D]ifferent district courts can and will sentence differently—differently from the Sentencing Guidelines range, differently from the sentence an appellate court might have imposed, and differently from how other district courts might have sentenced that defendant.” *Id.* at 1095. “As the qualifier ‘unwarranted’ reflects, this provision leaves plenty of room for differences in sentences when warranted under the circumstances.” *United States v. Brown*, 732 F.3d 781, 788 (7th Cir. 2013).²²

In cases for which the Sentencing Guidelines apply, “[t]he best way to curtail ‘unwarranted’ disparities is to follow the Guidelines, which are designed to treat similar offenses and offenders similarly.” *United States v. Bartlett*, 567 F.3d 901, 908 (7th Cir. 2009). *See id.* (“A sentence within a Guideline range ‘necessarily’ complies with § 3553(a)(6).”).

Although all the other defendants discussed below participated in the Capitol breach on January 6, 2021, many salient differences explain the differing recommendations and sentences. While no previously sentenced case contains the same balance of aggravating and mitigating

²² If anything, the Guidelines ranges in Capitol siege cases are more likely to understate than overstate the severity of the offense conduct. *See United States v. Knutson*, D.D.C. 22-cr-31 (FYP), Aug. 26, 2022 Sent. Hrg. Tr. at 24-25 (“If anything, the guideline range underrepresents the seriousness of [the defendant’s] conduct because it does not consider the context of the mob violence that took place on January 6th of 2021.”) (statement of Judge Pan).

factors present here, the sentences in the following cases provide suitable comparisons to the relevant sentencing considerations in this case.

Joshua Pruitt (21-CR-23-TJK) was a January 6 case where, like Brock, Pruitt had a lot of violent rhetoric in the lead up to January 6. Pruitt was a member of the Proud Boys and was communicating with other Proud Boys members, whereas Brock did not have an official affiliation to any specific group²³. Like Brock²⁴, Pruitt wore a Punisher logo on his clothing. Pruitt entered the Capitol earlier than Brock did; additionally, Pruitt had a close encounter with then House Majority Leader Chuck Schumer, as well as law enforcement officers. Pruitt did not go into the Senate Chamber, which Brock did twice. Pruitt also accepted responsibility for his criminal conduct on January 6 and pleaded guilty to obstruction of an official proceeding under 18 U.S.C. § 1512(c)(2). Pruitt was eventually sentenced to 55 months' incarceration.

Jerod Hughes (21-CR-106-TJK) is another January 6 case with some analogies to the Brock case. Like Brock, Hughes also went onto the Senate Floor and rifled through paperwork on Senator's desks. Hughes yelled violent rhetoric on January 6, though not of the intensity of the violent rhetoric that Brock displayed online in the days and weeks leading up to January 6. Hughes was involved in property destruction and chasing U.S. Capitol Police Officer Goodman,

²³ In a December 31, 2020 post on Facebook, Brock discussed his view of the 2020 electronic and used hashtags referencing the Oath Keepers and the Three Percenters (as well as the Second Amendment):

‘we are now under occupation by a hostile governing force. That may seem ludicrous to some, but I see no distinction between a group of Americans seizing power and governing with complete disregard for the Constitution and an invading force of Chinese communists accomplishing the same objective.’ Against all enemies foreign and domestic #OathKeeper #2A #III%

²⁴ Brock wore a Punisher patch on his tactical vest.

whereas Brock is not alleged to have done either of those things. Hughes accepted responsibility for his actions on January 6 and pleaded guilty to obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2). The Government asked for 46 months incarceration for Hughes, and Hughes was eventually sentenced to 38 months incarceration.

Matthew Bledsoe (21-CR-204-BAH) is another January 6 case with similarities to the Brock case. Bledsoe, like Brock, entered through the Senate Wing Doors within 15 minutes of the initial breach of those doors. Bledsoe also had social media rhetoric before January 6. Bledsoe paraded through the Capitol with a flag, while Brock had a pair of flex cuffs. Bledsoe went near the House Chamber, while Brock went onto the Senate Gallery, and onto the Senate Floor. Bledsoe spent a total of 22 minutes inside the Capitol, while Brock spent 38 minutes inside the Capitol. Like Brock, Bledsoe also was convicted after a trial. The Government asked for 70 months in Bledsoe, and Bledsoe was eventually sentenced to 48 months incarceration.

G. Brock's Objections to the PSR

Brock objected to paragraph 31 of the PSR, which states that Sgt. Timberlake referred to Brock as "the leader". The Government agrees that Sgt. Timberlake did not refer to Brock as "the leader" during trial, instead he spoke about Brock having a "commanding presence". Tr. 11/14/2022 166:1

Brock objected to paragraph 33 of the PSR, which stated that Brock's participation "in the riot contributed to the mob's ability to delay the certification proceedings for hours." The Government concurs with probation that Brock, as a part of the mob on January 6, is responsible for the delay to the certification proceedings. It was the mob of people, of which Brock was a

part, that caused the certification to be delayed on January 6. As Cpt. Patton testified to, any time one person bypasses security the Capitol Police have to go into lockdown to secure the threat. Tr. 11/14/2022, 78:15-22. Brock was part of the mob of people who entered the Capitol on January 6, while not going through any security screenings. Brock made his way into the Senate Chamber, where earlier in the afternoon Senators had been debating the certification of the State of Arizona. The certification of the vote was delayed, and could not continue for hours, because of the mob of people inside the Capitol of which Brock was a part of.

Brock objected to paragraph 37 of the PSR, which denies a reduction of levels for acceptance of responsibility. The Government has addressed that objection on page 24, footnote 20 of this memo.

Brock objected to paragraph 52 of the PSR, which assesses an additional eight levels for causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice. The Government has addressed that objection on page 23, footnote 16 of this memo.

Lastly, Brock objected to paragraph 53 of the PSR, which assesses an addition three levels for an offense which resulted in the substantial interference in the administration of justice. The Government has addressed that objection on page 23, footnote 17 of this memo.

VI. RESTITUTION

Under 18 U.S.C. § 3556, a sentencing court must determine whether and how to impose restitution in a federal criminal case. Because a federal court possesses no “inherent authority to order restitution,” *United States v. Fair*, 699 F.3d 508, 512 (D.C. Cir. 2012), it can impose

restitution only when authorized by statute, United States v. Papagno, 639 F.3d 1093, 1096 (D.C. Cir. 2011). Two general restitution statutes provide such authority. First, the Victim and Witness Protection Act of 1982 (“VWPA”), Pub. L. No. 97-291 § 3579, 96 Stat. 1248 (now codified at 18 U.S.C. § 3663), “provides federal courts with discretionary authority to order restitution to victims of most federal crimes.” Papagno, 639 F.3d at 1096. Second, the Mandatory Victims Restitution Act (“MVRA”), Pub. L. No. 104-132 § 204, 110 Stat. 1214 (codified at 18 U.S.C. § 3663A), “requires restitution in certain federal cases involving a subset of the crimes covered” in the VWPA. Papagno, 639 F.3d at 1096. The applicable procedures for restitution orders issued and enforced under these two statutes is found in 18 U.S.C. § 3664. See 18 U.S.C. § 3556 (directing that sentencing court “shall” impose restitution under the MVRA, “may” impose restitution under the VWPA, and “shall” use the procedures set out in Section 3664).

The VWPA and MVRA share certain features. Both require that restitution “be tied to the loss caused by the offense of conviction.” Hughey v. United States, 495 U.S. 411, 418 (1990) (interpreting the VWPA); see United States v. Clark, 747 F.3d 890, 897 (D.C. Cir. 2014) (restitution under the MVRA limited to the “offense of conviction” under Hughey).²⁵ Both require identification of a victim, defined in both statutes as “a person directly and proximately harmed as a result of” the offense of conviction.²⁶ See 18 U.S.C. § 3663(a)(2) (VWPA); 18 U.S.C.

²⁵ While both statutes generally limit restitution to losses resulting from conduct that is the basis of the offense of conviction, they also authorize the court to impose restitution under the terms of a plea agreement. See 18 U.S.C. § 3663(a)(3); 18 U.S.C. § 3663A(a)(3); see also United States v. Zerba, 983 F.3d 983, 986 (8th Cir. 2020); United States v. Giudice, 2020 WL 220089, at *5 (D.N.J., Jan. 15, 2020). The defendant in this case did not enter into a plea agreement.

²⁶ The government or a governmental entity can be a “victim” for purposes of the VWPA and MVRA. See United States v. Emor, 850 F. Supp.2d 176, 204 n.9 (D.D.C. 2012) (citations omitted).

§ 3663A(a)(2). “In view of the purpose of the MVRA and the interpretation of the VWPA's definition of ‘victim,’ we agree with the Government that it is ‘inconceivable that ... Congress somehow meant to exclude the Government as a potential victim under the MVRA when it adopted the definition of ‘victim’ contained in the VWPA.’” United States v. Ekanem, 383 F.3d 40, 44 (2d Cir. 2004).

Both statutes identify similar covered costs, including lost property and certain expenses of recovering from bodily injury. See Papagno, 639 F.3d at 1097-97; 18 U.S.C. §§ 3663(b), 3663A(b). Finally, under both the statutes, the government bears the burden by a preponderance of the evidence to establish the amount of loss suffered by the victim. United States v. Bikundi, 926 F.3d 761, 791 (D.C. Cir. 2019). The relevant inquiry is the scope of the defendant’s conduct and the harm suffered by the victim as a result. See Emor, 850 F. Supp. 2d at 202. The use of a “reasonable estimate” or reasonable approximation is sufficient, “especially in cases in which an exact dollar amount is inherently incalculable.”²⁷ United States v. Gushlak, 728 F.3d 184, 196 (2d Cir. 2013); see United States v. Sheffield, 939 F.3d 1274, 1277 (11th Cir. 2019) (estimating the restitution figure is permissible because “it is sometimes impossible to determine an exact restitution amount”) (citation omitted); United States v. James, 564 F.3d 1237, 1246 (10th Cir. 2009) (restitution order must identify a specific dollar amount but determining that amount is “by nature an inexact science” such that

²⁷ The sentencing court should “articulate the specific factual findings underlying its restitution order in order to enable appellate review.” Fair, 699 F.3d at 513. Here, the Court should find that Brock’s conduct in entering the Capitol building as part of a mob caused damage to that building.

“absolute precision is not required”) (citation omitted); *United States v. Burdi*, 414 F.3d 216, 221 (1st Cir. 2005) (same); *see also Paroline v. United States*, 572 U.S. 434, 459 (2014) (observing in the context of the restitution provision in 18 U.S.C. § 2259 that the court’s job to “assess as best it can from available evidence the significance of the individual defendant’s conduct in light of the broader casual process that produced the victim’s losses . . . cannot be a precise mathematical inquiry”).

The statutes also differ in significant respects. As noted above, the VWPA is a discretionary restitution statute that permits, but does not require, the sentencing court to impose restitution in any case where a defendant is convicted under Title 18 or certain other offenses in Title 21 or Title 49. 18 U.S.C. § 3663(a). In deciding whether to impose restitution under the VWPA, the sentencing court must take account of the victim’s losses, the defendant’s financial resources, and “such other factors as the court deems appropriate.” *United States v. Williams*, 353 F. Supp. 3d 14, 23-24 (D.D.C. 2019) (quoting 18 U.S.C. § 3663(a)(1)(B)(i)). By contrast, as noted above, the MVRA applies only to certain offenses, such as a “crime of violence,” § 3663A(c)(1)(A), or “Title 18 property offenses ‘in which an identifiable victim . . . has suffered a physical injury or pecuniary loss,’” *Fair*, 699 F.3d at 512 (citation omitted), but it requires imposition of full restitution without respect to a defendant’s ability to pay.²⁸

The VWPA also provides that restitution ordered under Section 3663 “shall be issued

²⁸ Both statutes permit the sentencing court to decline to impose restitution where doing so will “complicat[e]” or “prolong[]” the sentencing process. *See* 18 U.S.C. §§ 3663(a)(1)(B)(ii), 3663A(c)(3)(B).

and enforced in accordance with section 3664.” 18 U.S.C. § 3663(d). Because this case involves the related criminal conduct of hundreds of defendants, the Court has discretion to: (1) hold the defendants jointly and severally liable for the full amount of restitution owed to the victim(s), see 18 U.S.C. § 3664(f)(1)(A)(requiring that, for restitution imposed under § 3663, “the court shall order restitution to each victim in the full amount of each victim’s losses as determined by the court and without consideration of the economic circumstances of the defendant”); or (2) apportion restitution and hold the defendant and other defendants responsible only for each defendant’s individual contribution to the victim’s total losses. 18 U.S.C. § 3664(h). That latter approach is appropriate here.

More specifically, the Court should require Brock to pay \$2,000 in restitution for his convictions on Counts One through Six. This amount fairly reflects Brock’s role in the offense and the damages resulting from his conduct. Moreover, in cases where the parties have entered into a guilty plea agreement, two thousand dollars has consistently been the agreed upon amount of restitution and the amount of restitution imposed by judges of this Court where the defendant was not directly and personally involved in damaging property. Accordingly, such a restitution order avoids sentencing disparity.

VII. CONCLUSION

For the reasons set forth above, the government recommends that the Court impose a sentence of 60 months’ incarceration, 36 months’ supervised release, \$2,000 restitution, and the mandatory special assessments (\$100 for Count One, \$25 each for Counts Two and Three, and

\$10 each for Counts Four through Six).

Respectfully submitted,

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Table 1: Cases in which the government recommended a probation sentence without home detention¹

Defendant Name	Case Number	Offense of Conviction	Government Recommendation	Sentence Imposed
Morgan-Lloyd, Anna	1:21-CR-00164-RCL	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 40 hours' community service \$500 restitution	36 months' probation 120 hours' community service \$500 restitution
Ehrke, Valerie	1:21-CR-00097-PLF	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 40 hours' community service \$500 restitution	36 months' probation 120 hours' community service \$500 restitution
Bissey, Donna	1:21-CR-00165-TSC	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 40 hours' community service \$500 restitution	14 days' incarceration 60 hours' community service \$500 restitution
Hiles, Jacob	1:21-CR-00155-ABJ	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Wangler, Douglas	1:21-CR-00365-DLF	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 40 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Harrison, Bruce	1:21-CR-00365-DLF	40 U.S.C. § 5104(e)(2)(G)	48 months' probation 40 hours' community service \$500 restitution	24 months' probation 60 hours' of community service \$500 restitution

¹ Early in this investigation, the Government made a very limited number of plea offers in misdemeanor cases that included an agreement to recommend probation in *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164(RCL); *United States v. Valerie Elaine Ehrke*, 1:21-cr-00097(PFF); *United States v. Donna Sue Bissey*, 1:21-cr-00165(TSC), *United States v. Douglas K. Wangler*, 1:21-cr-00365(DLF), and *United States v. Bruce J. Harrison*, 1:21-cr-00365(DLF). The government is abiding by its agreements in those cases, but has made no such agreement in this case. *Cf. United States v. Rosales-Gonzales*, 801 F.3d 1177, 1183 (9th Cir. 2015) (no unwarranted sentencing disparities under 18 U.S.C. § 3553(a)(6) between defendants who plead guilty under a "fast-track" program and those who do not given the "benefits gained by the government when defendants plead guilty early in criminal proceedings") (citation omitted).

Table 2: Cases in which the government recommended a probation sentence with home detention

Defendant Name	Case Number	Offense of Conviction	Government Recommendation	Sentence Imposed
Bustle, Jessica	1:21-CR-00238-TFH	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 40 hours' community service \$500 restitution	2 months' home detention 24 months' probation 40 hours' community service \$500 restitution
Bustle, Joshua	1:21-CR-00238-TFH	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 40 hours' community service \$500 restitution	30 days' home detention 24 months' probation 40 hours' community service \$500 restitution
Doyle, Danielle	1:21-CR-00324-TNM	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' probation \$3,000 fine \$500 restitution
Bennett, Andrew	1:21-CR-00227-JEB	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	3 months' home detention 24 months' probation 80 hours' community service \$500 restitution
Mazzocco, Matthew	1:21-CR-00054-TSC	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration 60 hours' community service \$500 restitution
Rosa, Eitel	1:21-CR-00068-TNM	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 100 hours' community service \$500 restitution

Gallagher, Thomas	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation Fine 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Vinson, Thomas	1:21-CR-00355-RBW	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 3 years' probation 60 hours' community service \$500 restitution	5 years' probation \$5,000 fine 120 hours' community service \$500 restitution
Dillon, Brittany	1:21-CR-00360-DLF	40 U.S.C. § 5104(e)(2)(D)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 36 months' probation \$500 restitution
Sanders, Jonathan	1:21-CR-00384-CJN	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	36 months' probation 60 hours' community service \$500 restitution
Fitchett, Cindy	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Sweet, Douglas	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Cordon, Sean	1:21-CR-00269-TNM	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' probation \$4000 fine \$500 restitution

Wilkerson, John IV	1:21-CR-00302-CRC	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	36 months' probation \$2500 fine 60 hours' community service \$500 restitution
Jones, Caleb	1:21-CR-00321-JEB	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 24 months' probation 100 hours' community service \$500 restitution
Brown, Terry	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	45 days' home detention 36 months' probation 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Wrigley, Andrew	1:21-CR-00042-ABJ	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	18 months' probation \$2000 fine 60 hours' community service \$500 restitution
Parks, Jennifer	1:21-CR-00363-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Reimler, Nicholas	1:21-CR-00239-RDM	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Miller, Brandon	1:21-CR-00266-TSC	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	20 days' incarceration 60 hours' community service \$500 restitution
Miller, Stephanie	1:21-CR-00266-TSC	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	14 days' incarceration 60 hours' community service \$500 restitution
Hatley, Andrew	1:21-CR-00098-TFH	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	36 months' probation \$500 restitution

Pert, Rachael	1:21-CR-00139-TNM	18 U.S.C. § 1752(a)(1)	3 months' home detention 24 months' probation 40 hours' community service \$500 restitution	24 months' probation 100 hours' community service \$500 restitution
Winn, Dana	1:21-CR-00139-TNM	18 U.S.C. § 1752(a)(1)	3 months' home detention 24 months' probation 40 hours' community service \$500 restitution	10 days' incarceration (weekends) 12 months' probation 100 hours' community service \$500 restitution
Wickersham, Gary	1:21-CR-00606-RCL	40 U.S.C. § 5104(e)(2)(G)	4 months' home detention 36 months' probation 60 hours' community service \$500 restitution	3 months' home detention 36 months' probation \$2000 fine \$500 restitution
Schwemmer, Esther	1:21-CR-00364-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Kelly, Kenneth	1:21-CR-00331-CKK	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 12 months' probation \$500 restitution
Straka, Brandon	1:21-cr-00579-DLF	40 U.S.C. § 5104(e)(2)(D)	4 months' home detention 36 months' probation 60 hours' community service \$500 restitution	3 months' home detention 36 months' probation \$5000 fine 60 hours' community service \$500 restitution
Sizer, Julia	1:21-CR-00621-CRC	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation \$2,000 fine \$500 restitution
Blauser, William	1:21-CR-00386-TNM	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	\$500 fine \$500 restitution

Barnard, Richard	1:21-CR-00235-RC	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution	30 days' home detention 12 months' probation 60 hours' community service \$500 restitution
Witcher, Jeffrey	1:21-CR-00235-RC	18 U.S.C. § 1752(a)(1)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
McAlanis, Edward	1:21-CR-00516-DLF	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Lollis, James	1:21-CR-00671-BAH	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 100 hours' community service \$500 restitution	3 months' home detention 36 months' probation 100 hours' community service \$500 restitution
Schubert, Amy	1:21-CR-00588-ABJ	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	18 months' probation \$2000 fine 100 hours' community service \$500 restitution
Schubert, John	1:21-CR-00587-ABJ	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	18 months' probation \$1500 fine 100 hours' community service \$500 restitution
Orangias, Michael	1:21-CR-00265-CKK	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation \$500 restitution	3 months' home detention 36 months' probation \$500 restitution
Quick, Michael	1:21-CR-00201-DLF	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation \$500 restitution	36 months' probation \$1000 fine 60 hours' community service \$500 restitution
Quick, Stephen	1:21-CR-00201-DLF	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation \$500 restitution	24 months' probation \$1000 fine 60 hours' community service \$500 restitution

Rada, Kenneth	1:21-CR-00452-TFH	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution
McCreary, Brian	1:21-CR-00125-BAH	18 U.S.C. § 1752(a)(1)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	42 days' intermittent incarceration (condition of probation) 2 months' home detention 36 months' probation \$2,500 fine \$500 restitution
Colbath, Paul	1:21-CR-00650-RDM	40 U.S.C. § 5104(e)(2)(G)	3 months' home detention 36 months' probation 60 hours' community service \$500 restitution	30 day's home detention 36 months' probation 60 hours' community service \$500 restitution
Lewis, Jacob	1:21-CR-00100-CRC	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation \$3000 fine 60 hours' community service \$500 restitution
Lentz, Nicholes	1:22-CR-00053-RDM	18 U.S.C. § 1752(a)(1)	2 months' home detention 36 months' probation	1 month home detention 36 months' probation 100 hours' community service \$500 restitution
Daughtry, Michael	1:21-CR00141-RDM	18 U.S.C. § 1752(a)(1)	4 month's home detention 36 months' probation \$500 restitution	60 days' home detention 36 months' probation \$500 restitution
Juran, John	1:21-CR-00419-TFH	40 U.S.C. § 5104(e)(2)(G)	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 36 months' probation \$500 fine \$500 restitution
Genco, Raechel	1:22-CR-00062 - JMC	40 U.S.C. § 5104(e)(2)(G)	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Macrae, Douglas Farquhar	1:22-CR-00181 - JEB	40 U.S.C. § 5104(e)(2)(G)	4 months' home detention as part of a 36 month term of probation 60 hours' community service \$500 restitution	12 months' probation 150 hours' community service \$500 restitution

Seymour, Paul SR.	1:22-CR-00041 - APM	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 90 days' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Seymour, Paul Jr.	1:22-CR-00041 - APM	40 U.S.C. § 5104(e)(2)(G)	90 days' home detention 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Ferguson, Jamie	1:22-CR-00194 - APM	40 U.S.C. § 5104(e)(2)(G)	24 months' probation 30 days' home detention 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution

Table 3: Cases in which the government recommended a sentence of incarceration

Defendant Name	Case Number	Offense of Conviction	Government Recommendation	Sentence Imposed
Curzio, Michael	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	6 months' incarceration (time served)	6 months' incarceration (time served) \$500 restitution
Hodgkins, Paul	1:21-CR-00188-RDM	18 U.S.C. § 1512(c)(2)	18 months' incarceration	8 months' incarceration 24 months' supervised release \$2000 restitution
Dresch, Karl	1:21-CR-00071-ABJ	40 U.S.C. § 5104(e)(2)(G)	6 months' incarceration (time served) \$1000 fine \$500 restitution	6 months' incarceration (time served) \$500 restitution
Jancart, Derek	1:21-CR-00148-JEB	40 U.S.C. § 5104(e)(2)(D)	4 months' incarceration \$500 restitution	45 days' incarceration \$500 restitution
Rau, Erik	1:21-CR-00467-JEB	40 U.S.C. § 5104(e)(2)(D)	4 months' incarceration \$500 restitution	45 days' incarceration \$500 restitution
Hemenway, Edward	1:21-CR-00049-TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	45 days' incarceration 60 hours' community service \$500 restitution
Reeder, Robert	1:21-CR-00166-TFH	40 U.S.C. § 5104(e)(2)(G)	6 months' incarceration	3 months' incarceration

Bauer, Robert	1:21-CR-00049-TSC	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 30 days' incarceration \$500 restitution	\$500 restitution 45 days' incarceration 60 hours' community service \$500 restitution
Smocks, Troy	1:21-CR-00198-TSC	18 U.S.C. § 875(c)	Low end of sentencing guidelines 36 months' supervised release	14 months' incarceration 36 months' supervised release
Vinson, Lori	1:21-CR-00355-RBW	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	60 months' probation \$5,000 fine 120 hours' community service \$500 restitution
Griffith, Jack	1:21-CR-00204-BAH	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration \$500 restitution	3 months' home detention 36 months' probation \$500 restitution
Torrens, Eric	1:21-CR-00204-BAH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration \$500 restitution	3 months' home detention 36 months' probation \$500 restitution
Gruppo, Leonard	1:21-CR-00391-BAH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	3 months' home detention 24 months' probation \$3,000 fine \$500 restitution
Ryan, Jennifer	1:21-CR-00050-CRC	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	2 months' incarceration \$1000 fine \$500 restitution
Croy, Glenn	1:21-CR-00162-BAH	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	14 days' community correctional facility 3 months' home detention 36 months' probation \$500 restitution
Stotts, Jordan	1:21-CR-00272-TJK	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration \$500 restitution	2 months' home detention 24 months' probation 60 hours' community service \$500 restitution
Fairlamb, Scott	1:21-CR-00120-RCL	18 U.S.C. § 1512(e)(2) 18 U.S.C. § 111(a)(1)	44 months' incarceration 36 months' supervised release \$2000 fine	41 months' incarceration 36 months' supervised release \$2000 restitution

Camper, Boyd	1:21-CR-00325-CKK	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	2 months' incarceration 60 hours' community service \$500 restitution
Rukstales, Bradley	1:21-CR-00041-CJN	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Cordon, Kevin	1:21-CR-00277-TNM	18 U.S.C. § 1752(a)(1)	30 days' incarceration 12 months' supervised release \$500 restitution	12 months' probation \$4000 fine 100 hours' community service \$500 restitution
Chansley, Jacob	1:21-CR-00003-RCL	18 U.S.C. § 1512(c)(2)	51 months' incarceration 36 months' supervised release \$2000 restitution	41 months' incarceration 36 months' supervised release \$2000 restitution
Mish, David	1:21-CR-00112-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Lolos, John	1:21-CR-00243-APM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	14 days' incarceration \$500 restitution
Scavo, Frank	1:21-CR-00254-RCL	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration \$500 restitution	2 months' incarceration \$5000 fine \$500 restitution
Abual-Ragheb, Rasha	1:21-CR-00043-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	2 months' home detention 36 months' probation 60 hours' community service \$500 restitution
Peterson, Russell	1:21-CR-00309-ABJ	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Simon, Mark	1:21-CR-00067-ABJ	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration \$500 restitution	35 days' incarceration \$500 restitution
Ericson, Andrew	1:21-CR-00506-TNM	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	20 days' incarceration (consecutive weekends) 24 months' probation \$500 restitution
Pham, Tam Dinh	1:21-CR-00109-TJK	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	45 days' incarceration \$1000 fine \$500 restitution
Nelson, Brandon	1:21-CR-00344-JDB	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration \$500 restitution	24 months' probation \$2500 fine

					50 hours' community service \$500 restitution
Markofski, Abram	1:21-CR-00344-JDB	40 U.S.C. § 5104(e)(2)(G)		14 days' incarceration \$500 restitution	24 months' probation \$1000 fine 50 hours' community service \$500 restitution
Marquez, Felipe	1:21-CR-00136-RC	18 U.S.C. § 1752(a)(2)		4 months' incarceration 12 months' supervised release \$500 restitution	3 month's home detention 18 months' probation \$500 restitution
Meredith, Cleveland	1:21-CR-00159-ABJ	18 U.S.C. § 875(c)		Midrange of 37-46 months' incarceration 36 months' supervised release	28 months' incarceration 36 months' supervised release
Sorvisto, Jeremy	1:21-CR-00320-ABJ	40 U.S.C. § 5104(e)(2)(G)		30 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Mariotto, Anthony	1:21-CR-00094-RBW	40 U.S.C. § 5104(e)(2)(G)		4 months' incarceration 36 months' probation \$500 restitution	36 months' probation \$5000 fine 250 hours' community service \$500 restitution

Courtright, Gracy	1:21-CR-00072-CRC	18 U.S.C. § 1752(a)(1)	6 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	30 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution
Palmer, Robert	1:21-CR-00328-TSC	18 U.S.C. § 111(a) and (b)	63 months' incarceration 36 months' supervised release \$2000 restitution	63 months' incarceration 36 months' supervised release \$2000 restitution
Thompson, Devlyn	1:21-CR-00461-RCL	18 U.S.C. § 111(a) and (b)	48 months' incarceration 36 months' supervised release \$2000 restitution	46 months' incarceration 36 months' supervised release \$2000 restitution
Edwards, Gary	1:21-CR-00366-JEB	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 24 months' probation \$500 restitution	12 months' probation \$2500 fine 200 hours' of community service \$500 restitution
Tutrow, Israel	1:21-CR-00310-ABJ	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	2 months' home detention 36 months' probation \$500 restitution
Ridge IV, Leonard	1:21-CR-00406-JEB	18 U.S.C. § 1752(a)(1)	45 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	14 days' consecutive incarceration 12 months' supervised release \$1000 fine 100 hours' community service \$500 restitution
Perretta, Nicholas	1:21-CR-00539-TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Vukich, Mitchell	1:21-CR-00539-TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	30 days' incarceration \$500 restitution
Spencer, Virginia	1:21-CR-00147-CKK	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation \$500 restitution	3 months' incarceration \$500 restitution
Kostolsky, Jackson	1:21-CR-00197-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	30 days' home detention 36 months' probation \$500 restitution

Rusyn, Michael	1:21-CR-00303-ABJ	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration \$500 restitution	2 months' home detention 24 months' probation \$2000 fine \$500 restitution
Tryon, William	1:21-CR-00420-RBW	18 U.S.C. § 1752(a)(1)	30 days' incarceration 12 months' supervised release \$500 restitution	50 days' incarceration 12 months' supervised release \$1000 fine \$500 restitution
Sells, Tanner	1:21-CR-00549-ABJ	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	3 months' home detention 24 months' probation \$1500 fine 50 hours' community service \$500 restitution
Walden, Jon	1:21-CR-00548-DLF	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Prado, Nicole	1:21-CR-00403-RC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	2 months' 12-hour curfew 12 months' probation \$742 fine 60 hours' community service \$500 restitution
Williams, Vic	1:21-CR-00388-RC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 12 months' probation \$1500 fine 60 hours' community service \$500 restitution
Wiedrich, Jacob	1:21-CR-00581-TFH	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation \$500 restitution	3 months' home detention 36 months' probation 100 hours' community service \$500 restitution
Stepakoff, Michael	1:21-CR-00096-RC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 12 months' probation \$742 fine 60 hours' community service \$500 restitution

Scirica, Anthony	1:21-CR-00457-CRC	40 U.S.C. § 5104(e)(2)(G)	15 days' incarceration \$500 restitution	15 days' incarceration \$500 fine \$500 restitution
Cruse, Dalton	1:21-CR-00082-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	15 days' intermittent incarceration (condition of probation) 36 months' probation 60 hours' community service \$500 restitution
Williams, Troy	1:21-CR-00082-CJN	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	15 days' intermittent incarceration (condition of probation) 36 months' probation 60 hours' community service \$500 restitution
Languerand, Nicholas	1:21-CR-00353-JDB	18 U.S.C. § 111 (a) and (b)	51 months' incarceration 36 months' supervised release \$2000 restitution	44 months' incarceration 24 months' supervised release 60 hours' community service \$2000 restitution
Wilson, Zachary	1:21-CR-00578-APM	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	45 days' home detention 24 months' probation 60 hours' community service \$500 restitution
Wilson, Kelsey	1:21-CR-00578-APM	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	30 days' home detention 24 months' probation 60 hours' community service \$500 restitution
McAuliffe, Justin	1:21-CR-00608-RCL	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	2 months' home detention 36 months' probation \$500 restitution
Williams, Andrew	1:21-CR-00045-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 24 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Leffingwell, Mark	1:21-CR-00005-ABJ	18 U.S.C. § 111(a)(1)	27 months' incarceration 36 months' supervised release \$2000 restitution	6 months' incarceration 24 months' supervised release 200 hours' community service \$2,000 restitution

Wagner, Joshua	1:21-CR-00310-ABJ	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	30 days' incarceration \$500 restitution
Stenz, Brian	1:21-CR-00456-BAH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' incarceration as a condition of probation 2 months' home detention 36 months' probation \$2500 fine \$500 restitution
Schornak, Robert	1:21-CR-00278-BAH	18 U.S.C. § 1752(a)(1)	4-6 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	28 days' intermittent incarceration (2 14-day intervals) 2 months' home detention 36 months' probation \$500 restitution
Castro, Mariposa	1:21-CR-00299-RBW	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration \$500 restitution	45 days' incarceration \$5000 fine
Sunstrum, Traci	1:21-CR-00652-CRC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	30 days' home detention 36 months' probation \$500 restitution
Register, Jeffrey	1:21-CR-00349-TJK	40 U.S.C. § 5104(e)(2)(G)	5 months' incarceration \$500 restitution	75 days' incarceration \$500 restitution
Johnson, Adam	1:21-CR-00648-RBW	18 U.S.C. § 1752(a)(1)	90 days' incarceration 12 month's supervised release \$5000 fine	75 days' incarceration 12 months' supervised release \$5000 fine 200 hours' community service \$500 restitution
Howell, Annie	1:21-CR-00217-TFH	18 U.S.C. § 1752(a)(1)	60 days' incarceration 12 month's supervised release \$500 restitution	60 days' intermittent incarceration, to be served in 10-day installments, as a condition of probation 36 months' probation 60 hours' community service \$500 restitution
Gonzalez, Eduardo	1:21-CR-00115-CRC	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration \$500 restitution	24 months' probation \$1000 fine \$500 restitution
Wilson, Duke	1:21-CR-00345-RCL	18 U.S.C. § 1512(c)(2)	46 months' incarceration	51 months' incarceration

Strong, Kevin	1:21-CR-00114-TJK	18 U.S.C. § 111(a)(1) 40 U.S.C. § 5104(e)(2)(G)	\$2000 + TBD restitution for injured officer 14 days' incarceration 36 months' probation \$500 restitution	36 months' supervised release TBD restitution 30 days' home detention 24 months' probation 60 hours' community service \$500 restitution
Bonet, James	1:21-CR-00121-EGS	18 U.S.C. § 1752(a)(1)	45 days' incarceration 12 months' probation \$500 restitution	3 months' incarceration 12 months' probation 200 hours' community service \$500 restitution
Nalley, Verden	1:21-CR-00016-DLF	18 U.S.C. § 1752(a)(1)	14 days' incarceration 12 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Carico, Michael	1:21-CR-00696-TJK	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	2 months' home detention 24 months' probation \$500 fine 60 hours' community service \$500 restitution
Little, James	1:21-CR-00315-RCL	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	60 days' incarceration 36 months' probation \$500 restitution
Loftus, Kevin	1:21-CR-00081-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation	36 months' probation 60 hours' community service \$500 restitution
Smith, Jeffrey	1:21-CR-00290-RBW	40 U.S.C. § 5104(e)(2)(G)	5 months' incarceration \$500 restitution	90 days' incarceration 24 months' probation 200 hours' community service \$500 restitution
Kelley, Kari	1:21-CR-00201-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	36 months' probation \$500 restitution
Martin, Zachary	1:21-CR-00201-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	36 months' probation \$1000 fine 60 hours' community service \$500 restitution

Cudd, Jenny	1:21-CR-00068-TNM	18 U.S.C. § 1752(a)(1)	75 days' incarceration 12 months' supervised release \$500 restitution	2 months' probation \$5000 fine \$500 restitution
Jackson, Micajah	1:21-CR-00484-RDM	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration 36 months' supervised release \$500 restitution	36 months' probation with 90 days' in residential half-way house \$1,000 fine \$500 restitution
Petrosh, Robert	1:21-CR-00347-TNM	18 U.S.C. § 641	4 months' incarceration 12 months' supervised release 60 hours' community service \$938 restitution	10 days' incarceration 12 months' supervised release \$1,000 fine \$938 restitution
Ivey, Bryan	1:21-CR-00267-CRC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	60 days' home detention 36 months' probation \$500 restitution 60 hours' community service
Burress, Gabriel	1:21-CR-00744-TJK	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	45 days' home confinement 18 months' probation \$500 restitution 60 hours' community service
Pettit, Madison	1:21-CR-00744-TJK	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	45 days' home confinement 18 months' probation \$500 restitution 60 hours' community service
Coffman, Lonnie	1:21-CR-00004-CKK	26 U.S.C. § 5861(d) 22 D.C. Code § 4504(a)	Middle of SGR 36 months' probation	46 months' incarceration 36 months' supervised release
Fee, Thomas	1:21-CR-00133-JDB	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	24 months' probation \$500 fine \$500 restitution 50 hours' community service
Herendeen, Daniel	1:21-CR-00278-BAH	18 U.S.C. § 1752(a)(1)	28 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	14 days' incarceration 2 months' home detention 36 months' probation \$500 restitution

Zlab, Joseph	1:21-CR-00389-RBW	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	36 months' probation \$500 fine \$500 restitution 200 hours' community service
Riddle, Jason	1:21-CR-00304-DLF	18 U.S.C. § 641 40 U.S.C. § 5104(e)(2)(G)	90 days' incarceration 12 months' supervised release \$754 restitution	90 days' incarceration for the § 641 offense 36 months' probation for the § 5104(e)(2)(G) offense \$754 restitution 60 days' community service
Fox, Samuel	1:21-CR-00435-BAH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	2 months' home detention 36 months' probation \$2,500 fine \$500 restitution
O'Brien, Kelly	1:21-CR-00633-RCL	18 U.S.C. § 1752(a)(1)	5 months' incarceration 12 months' supervised release \$500 restitution	90 days' incarceration 12 months' supervised release \$1,000 fine \$500 restitution
Hardin, Michael	1:21-CR-00280-TJK	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 restitution 60 hours' community service	30 days' home confinement 18 months' probation \$500 restitution 60 hours' community service
Hernandez, Emily	1:21-CR-00747-JEB	18 U.S.C. § 1752(a)(1)	45 days' incarceration 12 months' supervised release \$500 restitution 60 hours' community service	30 days' incarceration 12 months' supervised release \$500 restitution 80 hours' community service
Merry, William	1:21-CR-00748-JEB	18 U.S.C. § 641	4 months' incarceration 12 months' supervised release \$500 restitution 60 hours' community service	45 days' incarceration 9 months' supervised release 80 hours' community service
Westover, Paul	1:21-CR-00697-JEB	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration \$500 restitution	45 days' incarceration \$500 restitution
O'Malley, Timothy	1:21-CR-00704-CRC	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 20 hours' community service \$500 restitution

Reed, Blake	1:21-CR-00204-BAH	18 U.S.C. § 1752(a)(1)	3 months' incarceration 12 months' supervised release \$500 restitution	42 days' intermittent confinement 3 months' home detention 36 months' probation \$2500 fine \$500 restitution
Rebegila, Mark	1:21-CR-00283-APM	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration 36 months' probation \$500 restitution	30 days' home detention 24 months' probation \$2000 fine 60 hours' community service \$500 restitution
Watrous, Richard	1:21-CR-00627-BAH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' intermittent confinement 2 months' home detention 36 months' probation \$2500 fine \$500 restitution
Meteer, Clifford	1:21-CR-00630-CJN	40 U.S.C. § 5104(e)(2)(G)	75 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution
Conover, Thomas	1:21-CR-00743-FYP	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' residential reentry center 36 months' probation \$2500 fine 60 hours' community service \$500 restitution
Lavin, Jean	1:21-CR-00596-BAH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	10 days' intermittent confinement (5 weekends) 2 months' home detention 36 months' probation \$2500 fine \$500 restitution
Krzywicki, Carla	1:21-CR-00596-BAH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	36 months' probation 3 months' home detention \$500 restitution
Kulas, Christian	1:21-CR-00397-TFH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service	6 months' probation 2 months' home detention \$500 restitution

Kulas, Mark	1:21-CR-00693-TFH	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	6 months' probation 2 months' home detention \$500 restitution
Von Bernewitz, Eric	1:21-CR-00307-CRC	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' home detention 24 months' probation \$1000 fine \$500 restitution
Von Bernewitz, Paul	1:21-CR-00307-CRC	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration \$500 restitution
Ballesteros, Robert	1:21-CR-00580-DLF	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 14 days' incarceration 24 months' probation 60 hours' community service \$500 restitution	36 months' probation 40 hours' community service \$500 restitution
Sarko, Oliver	1:21-CR-00591-CKK	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 36 months' probation \$500 restitution
Vuksanaj, Anthony	1:21-CR-00620-BAH	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	42 days' intermittent confinement (3, 14-day periods) 3 months' home detention 36 months' probation \$2000 fine \$500 restitution
Creek, Kevin	1:21-CR-00645-DLF	18 U.S.C. § 111(a)(1)	\$2000 restitution 27 months' incarceration 36 months' supervised release	27 months' incarceration 12 months' supervised release \$2000 restitution
Peart, Willard	1:21-CR-00662-PLF	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 36 months' probation 240 hours' community service \$500 fine \$500 restitution

Webler, Matthew	1:21-CR-00741-DLF	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration \$500 restitution	45 days' incarceration \$500 restitution
Mostofsky, Aaron	1:21-CR-00138-JEB	18 U.S.C. § 641 18 U.S.C. § 231 (a)(3) 18 U.S.C. § 1752(a)(1)	15 months' incarceration 36 months' supervised release \$2000 restitution	8 months' incarceration 12 months' supervised release on each count to run concurrently 200 hours' community service \$2000 restitution
Entrekin, Nathan	1:21-CR-00686-FYP	40 U.S.C. § 5104(e)(2)(G)	105 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution
Kidd, Nolan	1:21-CR-00429-CRC	40 U.S.C. § 5104(e)(2)(G)	90 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration \$500 restitution
Baker, Stephen	1:21-CR-00273-TFH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration \$500 restitution	9 days' intermittent confinement 24 months' probation \$500 restitution
McDonald, Savannah	1:21-CR-00429-CRC	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	21 days' incarceration \$500 restitution
Honeycutt, Adam	1:22-CR-00050-CJN	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	3 months' incarceration \$500 restitution
Spain, Jr., Edward	1:21-CR-00651-DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation 60 hours' community service \$500 restitution
Kramer, Philip	1:21-CR-00413-EGS	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration \$2500 fine 100 hours' community service \$500 restitution
Ehmke, Hunter	1:21-CR-00029-TSC	18 U.S.C. § 1361	4 months' incarceration 36 months' supervised release	4 months' incarceration 36 months' supervised release

Chapman, Robert	1:21-CR-00676-RC	40 U.S.C. § 5104(e)(2)(G)	\$2,181 restitution 45 days' incarceration 36 months'	\$2,181 restitution 3 month's home detention 18 month's probation \$742 fine 60 hours' community service \$500 restitution
Timbrook, Michael	1:21-CR-00361-TNM	40 U.S.C. § 5104(e)(2)(G)	90 days' incarceration 36 months' probation	14 days' intermittent incarceration to be served on 7 consecutive weekends, as a condition of 12 months' probation \$500 restitution
Miller, Matthew	1:21-CR-00075-RDM	18 U.S.C. § 1512(c)(2) 18 U.S.C. § 111(a)(1)	51 months' incarceration 36 month's supervised release	33 months' incarceration 24 months' probation \$2000 restitution 100 hours' community service
Hemphill, Pamela	1:21-CR-00555-RCL	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration 36 month's probation	2 months' incarceration 36 month's probation \$500 restitution
Rubenacker, Greg	1:21-CR-00193-BAH	18 U.S.C. § 231(a)(3) 18 U.S.C. § 1512(c)(2) 18 U.S.C. § 111(a) 18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 18 U.S.C. § 1752(a)(4) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(E) 40 U.S.C. § 5104(e)(2)(F) 40 U.S.C. § 5104(e)(2)(G)	46 months' incarceration 36 months' supervised release	41 months' incarceration 36 months' supervised release \$2000 restitution
Johnson, Daniel	1:21-CR-00407-DLF	18 U.S.C. § 231(a)(3)	6 months' incarceration 12 months' supervised release	4 months' incarceration 12 months' supervised release \$2000 restitution
Johnson, Daryl	1:21-CR-00407-DLF	18 U.S.C. § 231(a)(3)	90 days' incarceration 12 months' supervised release	30 days' incarceration 12 months' supervised release \$2000 fine \$2000 restitution
Buhler, Janet	1:21-CR-00510-CKK	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration	30 days' incarceration

Tagaris, Jody	1:21-CR-00368-JDB	40 U.S.C. § 5104(e)(2)(G)	36 months' supervised release \$500 restitution	36 months' supervised release \$500 restitution 24 months' probation \$2000 fine \$500 restitution 60 hours' community service
Heinl, Jennifer	1:21-CR-00370-EGS	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	14 days' incarceration 24 months' probation \$500 restitution
Sywak, William Jason	1:21-CR-00494-RC	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	2 months' home detention 12 months' probation 60 hours' community service \$500 restitution
Sywak, William Michael	1:21-CR-00494-RC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	4 month's home detention 24 months' probation 60 hours' community service \$500 restitution
Laurens, Jonathan	1:21-CR-00450-RC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	60 days' home detention 12 months' probation \$742 fine \$500 restitution 60 hours' community service
Cooke, Nolan	1:22-CR-00052-RCL	18 U.S.C. § 231(a)(3)	11 months' incarceration 36 months' supervised release \$2000 restitution	366 days' incarceration 36 months' supervised release \$2000 restitution
Barber, Eric	1:21-cr-00228-CRC	40 U.S.C. § 5104(e)(2)(G) 22 D.C. Code 3212	4 months' incarceration 36 months' probation \$552.95 restitution	45 days' incarceration 24 months' probation \$552.95 restitution
Gold, Simone	1:21-CR-00085-CRC	18 U.S.C. § 1752(a)(1)	3 months' incarceration 12 month's supervised release \$500 restitution 60 hours' community service	60 days' incarceration 12 months' supervised release \$9,500 fine \$500 restitution
Griffin, Cuoy	1:21-CR-00092-TNM	18 U.S.C. § 1752(a)(1)	60 days' incarceration 12 months' supervised release 45 days' incarceration 36 months' probation	14 days' incarceration 12 months' supervised release 14 days' intermittent incarceration as a condition of 36 months' probation
Stackhouse, Lawrence	1:21-CR-00240-BAH	40 U.S.C. § 5104(e)(2)(G)	36 months' probation	

			18 U.S.C. § 1752 (a)(1)	\$500 restitution	\$500 restitution
Baranyi, Lawrence	1:21-CR-00062-JEB			4 months' incarceration 12 months' supervised release \$500 restitution	90 days' incarceration 12 months' year supervised release \$500 restitution
Evans, Derrick	1:21-CR-00337-RCL		18 U.S.C. § 231(a)(3)	3 months' incarceration 36 months' supervised release \$2000 restitution	3 months' incarceration 36 months' supervised release \$2000 restitution \$2000 fine
Lucard, Carson	1:22-CR-00087-BAH		40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation \$500 restitution	21 days' intermittent confinement as a condition of 36 months' probation 60 days' home detention \$500 restitution
Cunningham, Christopher	1:21-CR-00603-RC		40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	3 months' home detention 12 months' probation \$1,113 fine \$500 restitution
Prezlin, Brandon	1:21-CR-00694-TNM		40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	10 months' probation \$2,500 fine 120 hours' community service \$500 restitution
Weisbecker, Philip	1:21-CR-00682-TFH		40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation \$500 restitution	30 days' intermittent confinement as a condition of 24 months' probation \$2,000 fine \$500 restitution
Sidorski, Dennis	1:21-CR-00048-ABJ		18 U.S.C. § 1752 (a)(2)	12 months' incarceration 12 months' supervised release \$500 restitution	100 days' incarceration 12 months' supervised release 50 hours' community service \$500 restitution
Bromley, Phillip	1:21-CR-00250-PLF		18 U.S.C. § 1752(a)(2)	12 months' incarceration 12 months' supervised release \$500 restitution	90 days' incarceration 12 months' supervised release \$4,000 fine \$2,000 restitution
Revlett, Jordan	1:21-CR-00281-JEB		40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	14 days' incarceration 12 months' probation 80 hours' community service \$500 restitution

Snow, Robert	1:22-CR-00030-TJK	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Torre, Benjamin	1:21-CR-00143-RC	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	12 months' probation \$1,113 fine 60 hours' community service \$500 restitution
Grace, Jeremy	1:21-CR-00492-JDM	18 U.S.C. § 1752 (a)(1)	60 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	21 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution
Getsinger, John	1:21-CR-00607-EGS	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 restitution	60 days' incarceration 36 months' probation 100 hours' community service \$500 restitution
Getsinger, Stacie	1:21-CR-00607-EGS	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 restitution	60 days' incarceration 36 months' probation 100 hours' community service \$500 restitution
Suarez, Marissa	1:21-CR-00205-DLF	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	36 months' probation 60 hours' community service \$2000 fine \$500 restitution
Todisco, Patricia	1:21-CR-00205-DLF	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	36 months' probation 60 hours' community service \$2000 fine \$500 restitution
Blair, David	1:21-CR-00186-CRC	18 U.S.C. § 231(a)(3)	8 months' incarceration 36 months' supervised release \$2000 restitution	5 months' incarceration 18 months' supervised release \$2,000 restitution
Griswold, Andrew	1:21-CR-00459-CRC	18 U.S.C. § 231(a)(3)	5 months' incarceration 36 months' supervised release \$2,000 restitution	75 days' incarceration 24 months' supervised release \$2,000 restitution
Blakely, Kevin	1:21-CR-00356-EGS	40 U.S.C. § 5104(e)(2)(G)	4 months' incarceration 36 months' probation \$500 restitution	120 days' incarceration 18 months' probation 100 hours' supervised release

Persick, Kerry	1:21-CR-00485-BAH	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation \$500 restitution	\$500 restitution 36 months' probation 90 days' supervised release \$5,000 fine \$500 restitution
Ticas, David	1:21-CR-00601-JDB	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' incarceration 24 months' probation 60 hours' community service \$500 restitution
Lindsey, Terry	1:21-CR-00162-BAH	18 U.S.C. § 1752(a)(1) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(G)	12 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	5 months' incarceration on the § 5104 counts to be served concurrently 36 months' probation on the § 1752 count \$500 restitution
Mattice, Cody	1:21-CR-00657-BAH	18 U.S.C. § 111(a)(1)	44 months' incarceration 36 months' supervised release \$2,000 restitution	44 months' incarceration 36 months' supervised release \$2,000 restitution
Mault, James	1:21-CR-00657-BAH	18 U.S.C. § 111(a)(1)	44 months' incarceration 36 months' supervised release \$2,000 restitution	44 months' incarceration 36 months' supervised release \$2,000 restitution
Bancroft, Dawn	1:21-CR-00271-ESG	40 U.S.C. § 5104(e)(2)(G)	60 day's incarceration 36 months' probation 60 hours' community service \$500 restitution	60 day's incarceration 36 months' probation \$500 restitution
Santos-Smith, Diana	1:21-CR-00271-ESG	40 U.S.C. § 5104(e)(2)(G)	14 day's incarceration 36 months' probation 60 hours' community service \$500 restitution	20 day's incarceration 36 months' probation \$500 restitution
Buckler, Matthew	1:22-CR-00162-TNM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' home detention 24 months' probation 60 hours' community service \$500 restitution
Romero, Moises	1:21-CR-00677-TSC	18 U.S.C. § 231(a)(3)	11 months' incarceration 36 months' supervised release \$2000 restitution	One year and one day incarceration 12 months' supervised release \$2,000 restitution

Ponder, Mark	1:21-CR-00259-TSC	18 U.S.C. § 111(a)(1) and (b)	60 months' incarceration 36 months' supervised release \$2000 restitution	63 months' incarceration 36 months' supervised release \$2000 restitution Mental health treatment
Bishai, Elliot	1:21-CR-00282-TSC	18 U.S.C. § 1752(a)(1)	30 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	14 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution
Reffitt, Guy	1:21-CR-00032-DLF	18 U.S.C. § 231(a)(2) 18 U.S.C. § 1512(c)(2) 18 U.S.C. § 1752(a)(1) 18 U.S.C. § 231(a)(3) 18 U.S.C. § 1512(a)(2)(C)	180 months' incarceration 3 years supervised release \$2000 restitution	87 months' incarceration 3 years supervised release \$2000 restitution
Caplinger, Jeremiah	1:21-CR-00342-PLF	40 U.S.C. § 5104(d)	90 days' incarceration 36 months' probation \$500 restitution	35 days' incarceration 24 months' probation 60 hours' community service \$500 restitution
Cavanaugh, Andrew	1:21-CR-00362-APM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Baggott, Matthew	1:21-CR-00411-APM	18 U.S.C. § 1752(a)(2)	middle of sentencing guidelines range 12 months' supervised release 60 hours' community service \$500 restitution	3 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution
Willden, Ricky	1:21-CR-00423-RC	18 U.S.C. § 111(a)(1)	30 months' incarceration 36 months' supervised release \$2000 restitution	24 months' incarceration 36 months' release \$2000 restitution
Hyland, Jason	1:21-CR-00050-CRC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	7 days' incarceration \$500 restitution \$4,000 fine
Ortiz, Christopher	1:22-CR-00082-JMC	40 U.S.C. § 5104(e)(2)(G)	5 months' incarceration 36 months' probation \$500 restitution	12 months' probation 2 months' Home Detention 100 hours' community service \$500 Restitution

Homer, Lisa	1:22-CR-00238-TNM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation \$5,000 fine 60 hours' community service \$500 restitution
Batancur, Bryan	1:21-CR-00051-TJK	18 U.S.C. § 1752(a)(1)	6 months' incarceration 12 months' supervised release \$500 restitution	4 months' incarceration 12 months' supervised release \$500 restitution
Larocca, Benjamin	1:21-CR-00317-TSC	18 U.S.C. § 1752(a)(2)	3 months' incarceration 12 months' supervised release \$500 restitution	60 days' incarceration 12 months' supervised release \$5,000 fine 60 hours' community service \$500 restitution
Robertson, Thomas	1:21-CR-00034-CRC	18 U.S.C. § 1512(c)(2) and 2 18 U.S.C. § 231(a)(3) and 2 18 U.S.C. § 1752(a)(1) and (b)(1)(A) 18 U.S.C. § 1752(a)(2) and (b)(1)(A) 40 U.S.C. § 5104(e)(2)(D)	96 months' incarceration 3 years' supervised release \$2,000 restitution \$100 special assessment for each count of conviction	87 months' incarceration 36 months' supervised release \$2,000 restitution
Simon, Glen Mitchell	1:21-CR-00346-BAH	18 U.S.C. § 1752(a)(2)	10 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	8 months' incarceration 12 months' supervised release \$1,000 fine \$500 restitution
Cameron, John	1:22-CR-00017-TFH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' imprisonment as an intermittent confinement condition of probation 36 months' probation \$1,000 fine \$500 restitution
Fracker, Jacob	1:21-CR-00034-CRC	18 U.S.C. § 371	6 months' probation consistent with Zone B 3 years' supervised release \$100 special assessment \$2,000 restitution	\$500 restitution 12 months' probation 59 days' home confinement 120 hours' community service \$2,000 restitution

Morrissey, Daniel	1:21-CR-00660-RBW	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 90 days' home confinement 60 hours' community service \$500 restitution	45 days' incarceration 36 months' probation \$2,500 fine \$500 restitution
Lazo, Kene	1:21-CR-00425-CRC	40 U.S.C. § 5104(e)(2)(G)	90 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration \$500 restitution
Knutson, Billy	1:22-CR-00031-FYP	18 U.S.C. § 1752(a)(1)	6 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	6 months' incarceration 12 months' supervised release \$500 restitution
Carlton, Daniel Jonathan	1:21-CR-00247-TFH	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' supervised release \$500 restitution
Richardson, Howard	1:21-CR-00721-CKK	18 U.S.C. § 111(a)(1)	46 months' incarceration 3 years supervised release \$2,000 restitution	46 months' incarceration 36 months' probation \$2,000 restitution
Pruitt, Joshua	1:21-CR-00023 – TJK	18 U.S.C. § 1512(c)(2) and (2)	60 months' incarceration 36 months' supervised release \$2,000 restitution	55 months' incarceration 36 months' supervised release \$2,000 restitution
Thurflow, Steven	1:21-CR-00615 – DLF	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 80 hours' community service \$500 restitution
Cortez, Christian Glen	1:21-CR-00317 – TSC	18 U.S.C. § 231(a)(3)	4 months' incarceration 36 months' supervised release \$2,000 restitution	4 months' incarceration 36 months' supervised release 60 hours' community service \$2,000 restitution
Webster, Thomas	1:21-CR-00208 – APM	18 U.S.C. § 111(a)(1), (b); 18 U.S.C. § 231(a)(3); 18 U.S.C. § 1752(a)(1), (b)(1)(A),	210 months' incarceration 36 months' supervised release \$2,060 restitution	120 months' incarceration 36 months' supervised release \$2,060 restitution

		18 U.S.C. § 1752(a)(2), (b)(1)(A); 18 U.S.C. § 1752(a)(4), (b)(1)(A); 40 U.S.C. § 5104(e)(2)(F) 18 U.S.C. § 1512(c)(2)			
Michetti, Richard	1:21-cr-00232 – CRC			18 months' incarceration 36 months' supervised release \$2,000 restitution	9 months' incarceration 24 months' supervised release \$2,000 restitution
Watson, Sean	1:21-CR-00422 – APM	40 U.S.C. § 5104(e)(2)(G)		14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	7 days' incarceration 24 months' probation 60 hours' community service \$500 restitution
McNicoll, Lois Lynn	1:21-CR-00468 – DLF	40 U.S.C. § 5104(e)(2)(G)		14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 80 hours' community service \$500 restitution
Schwartzberg, Dovid	1:21-CR-00338 – TFH	40 U.S.C. § 5104(e)(2)(G)		120 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration \$500 restitution
Youngers, Darrell	1:21-CR-00640 – TFH	40 U.S.C. § 5104(e)(2)(G)		30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation \$1,000 fine \$500 restitution
Vollan, Cody	1:22-CR-00044-APM	40 U.S.C. § 5104(e)(2)(G)		14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Carollo, Anthony	1:22-CR-00044-APM	40 U.S.C. § 5104(e)(2)(G)		14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Carollo, Jeremiah	1:22-CR-00044-APM	40 U.S.C. § 5104(e)(2)(G)		45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	21 days' incarceration 12 months' probation 60 hours' community service \$500 restitution

Bratjan, Frank	1:22-CR-00285-TNM	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 days' community service \$500 restitution	6 months' probation \$1500 fine \$500 restitution
Ferreira, Leticia	1:22-CR-00210-THC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	3 months' home detention 12 months' probation \$371 fine 60 hours' community service \$500 restitution
Connor, Francis	1:21-CR-00586-RC	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 probation	12 months' probation \$371 fine 60 hours' community service \$500 probation
Ferrigno, Antonio	1:21-CR-00586-RC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	12 months' probation \$371 fine
Lunyk, Anton	1:21-CR-00586-RC	40 U.S.C. § 5104(e)(2)(G)	20 days' incarceration 36 months' probation \$500 restitution	12 months' probation \$742 fine 60 hours' community service \$500 restitution
Packer, Robert	1:21-CR-00103-CJN	40 U.S.C. § 5104(e)(2)(G)	75 days' incarceration 36 months' probation \$500 restitution	75 days' incarceration \$500 restitution
Williams, Anthony	1:21-CR-00377-BAH	18 U.S.C. § 1512(c)(2) 40 U.S.C. § 5104(e)(2)(D) and (G) 18 U.S.C. § 1752(a)(1) and (2)	64 month's incarceration 36 months' supervised release \$2000 restitution	60 month's incarceration 36 months' supervised release \$5000 fine \$2000 restitution
Vincent, Reva	1:22-CR-00051 - TNM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$1,500 fine \$500 restitution
Lyon, Robert	1:21-CR-00161 - RBW	18 U.S.C. § 1752(a)(2) 18 U.S.C. § 641	90 days' incarceration 12 months' supervised release \$2,000 restitution	40 days' incarceration 12 months' supervised release \$1,000 fine \$2,000 restitution

Ayres, Stephen	1:21-CR-00156 - JDB	18 U.S.C. § 1752(a)(2)	60 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	24 months' probation 100 hours' community service \$500 restitution
Hale-Cusanelli, Tim	1:21-CR-00037 - TNM	18 U.S.C. § 1512(c)(2) and 2 18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 40 U.S.C. § 5104(e)(2)(D)	78 months' incarceration 36 months' supervised release \$2,000 restitution	48 months' incarceration 36 months' supervised release \$2,000 restitution
Hamner, Thomas	1:21-CR-00689 - ABJ	40 U.S.C. § 5104(e)(2)(G) 18 U.S.C. § 231(a)(3) and 2	60 months' incarceration 36 months' supervised release \$2,000 restitution	30 months' incarceration 36 months' supervised release 200 hours' community service \$2,000 restitution
Santillan, Blas	1:22-CR-00032 – FYP	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution
Neeff, Marshall	1:21-CR-00567 - RCL	18 U.S.C. § 1512(k) 18 U.S.C. § 111(a)(1)	46 months' incarceration 36 months' supervised release \$2,000 restitution	41 months' incarceration 36 months' supervised release \$2,000 restitution
Smith, Charles Bradford	1:21-CR-00567 – RCL	18 U.S.C. § 1512(k) 18 U.S.C. § 111(a)(1, 2)	44 months' incarceration 36 months' supervised release \$2,000 restitution	41 months' incarceration 36 months' supervised release \$2,000 restitution
Brannan, Cory	1:21-CR-00637 – TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 24 months' supervised release \$500 restitution
Warmus, Daniel	1:21-CR-00417 - PLF	40 U.S.C. § 5104(e)(2)(G)	\$500 restitution 30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration 24 months' probation 60 hours' community service \$500 restitution
Young, Kyle	1:21-CR-00291 - ABJ	18 U.S.C. § 111(a)(1)	86 months' incarceration 36 months' supervised release \$2,000 restitution	86 months' incarceration 36 months' supervised release 100 hours' community service

Demney, Lucas	1:22-CR-00070 - RDM	18 U.S.C. § 111b	A term of incarceration in the middle of the guideline range 36 months' supervised release	\$2,000 restitution 52 months' incarceration 36 months' supervised release
Rader, Kenneth	1:22-CR-00057 - RCL	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	90 days' incarceration 36 months' probation \$500 restitution
Hentschel, Cara	1:21-CR-00667 – FYP	40 U.S.C. § 5104(e)(2)(G)	3 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation \$500 restitution
Pryer, Mahailya	1:21-CR-00667 – FYP	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	45 days' incarceration 36 months' probation \$500 restitution
Mazzio, Anthony	1:22-CR-00214 - RCL	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' incarceration 36 months' probation \$500 restitution
Ferreira, Leticia	1:22-CR-00210 - TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution
Dropkin, Lawrence	1:21-CR-00734 – JEB	18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 12 months' supervised release \$500 restitution
Fisher, Samuel	1:21-CR-00142 – CJN	18 U.S.C. § 1752(a)(1)	120 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	120 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution
Galloway, Andrew	1:22-CR-00012 – CRC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	30 days' incarceration \$1,000 fine \$500 restitution

Munn, Dawn	1:21-CR-00474 - BAH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation with conditions that include 90 days' home confinement and 14 days' intermittent confinement 60 hours' community service \$500 restitution
Munn, Joshua	1:21-CR-00474 - BAH	40 U.S.C. § 5104(e)(2)(G)	21 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation 60 hours' community service \$500 restitution
Munn, Kayli	1:21-CR-00474 - BAH	40 U.S.C. § 5104(e)(2)(G)	21 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation 60 hours' community service \$500 restitution
Munn, Kristi	1:21-CR-00474 - BAH	40 U.S.C. § 5104(e)(2)(G)	21 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	90 days' home detention 36 months' probation 60 hours' community service \$500 restitution
Munn, Thomas	1:21-CR-00474 - BAH	40 U.S.C. § 5104(e)(2)(G)	36 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation with conditions that include 90 days' home confinement and 14 days' intermittent confinement 60 hours' community service \$500 restitution
Suleski, Ryan	1:21-CR-00376 - RDM	18 U.S.C. § 1752(a)(1) 18: U.S.C § 641	90 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	60 days' incarceration 60 hours' community service \$500 restitution
Valadez, Rafael	1:21-CR-00695 - JEB	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration \$500 restitution
Ryals, Jerry	1:21-CR-00244 – CKK	18 U.S.C. § 231(a)(3)	6 months' incarceration 36 months' supervised release \$2,000 restitution	9 months' incarceration 36 months' supervised release \$2,000 restitution

Secor, Christian	1:21-CR-00157 - TNM	18 U.S.C. § 1512(c)(2)	57 months' incarceration 36 months' supervised release \$2,000 restitution	42 months' incarceration 36 months' supervised release \$2,000 restitution
Fairchild, Jr., Robert	1:21-CR-00551 - TFH	18 U.S.C. § 231(a)(3)	11 months' incarceration 36 months' supervised release \$2,000 restitution	6 months' incarceration \$2,000 restitution
Munger, Jeffrey	1:22-CR-00123 - RDM	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 4 months' home detention 60 hours' community service \$500 restitution	30 months' probation Curfew Restriction of 7 a.m. to 7 p.m. 90 days' location monitoring 60 hours' community service \$500 restitution
Byerly, Alan	1:21-CR-00527 - RDM	18 U.S.C. § 111(a)(1) 18 U.S.C. § 113(a)(4);	46 months' incarceration 36 months' supervised release \$2,000 restitution	34 months' incarceration 36 months' supervised release \$2,000 restitution
Bledsoe, Matthew	1:21-CR-00204 - BAH	18 U.S.C. § 1512(c)(2) 18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(G)	70 months' incarceration 36 months' supervised release \$2,000 restitution	48 months' incarceration 36 months' supervised release \$2,000 fine \$2,000 restitution
Mazza, Andrew Mark	1:21-CR-00736 - JEB	18 U.S.C. § 111(a)(1) and (b); 22 D.C. Code § 4504	78 months' incarceration 36 months' supervised release \$2,150 restitution	60 months' incarceration 36 months' supervised release \$2,000 restitution
Seefried, Hunter	1:21-CR-00287 - TNM	18 U.S.C. § 1512(c)(2) and 2 18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(G)	64 months' incarceration 36 months' supervised release \$2,000 restitution	24 months' incarceration 12 months' supervised release \$2,000 restitution
Rodean, Nicholas	1:21-CR-00057 - TNM	18 U.S.C. § 1361; 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 18 U.S.C. § 1752(a)(4); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(F);	57 months' incarceration 36 months' supervised release \$2,048 restitution	5 years' probation, including 240 days' of home detention and location monitoring with internet use restrictions.

Head, Albuquerque Casper	1:21-CR-00291 – ABJ	40 U.S.C. § 5104(e)(2)(G) 18 U.S.C. § 111(a)(1)	96 months' incarceration 36 months' supervised release \$2,000 restitution 18 months' incarceration 36 months' supervised release \$2,000 restitution	90 months' incarceration 36 months' supervised release \$2,000 restitution 15 months' incarceration 12 months' supervised release \$2,000 restitution
Priola, Christine	1:22-CR-00242 - TSC	18 U.S.C. § 1512(c)(2)(2)	30 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	36 months' probation, with a 90-day home confinement condition 60 hours' community service \$500 restitution
Mels, James Allen	1:21-CR-00184 – BAH	18 U.S.C. § 1752(a)(1)	4 months' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Clark, Christy	1:21-CR-00218 – APM	40 U.S.C. § 5104(e)(2)(G)	4 months' home detention 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Clark, Matthew	1:21-CR-00218 – APM	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 45 days' home detention imposed as condition of probation 60 hours' community service \$500 restitution
Spigelmyer, Paul	1:21-CR-00218 - APM	18 U.S.C. § 5104 (e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' intermittent incarceration 36 months' probation \$500 restitution
Logsdon, Christopher	1:22-CR-00023 - TFH	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' intermittent incarceration 36 months' probation \$500 restitution
Logsdon, Tina	1:22-CR-00023 - TFH	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' intermittent incarceration 36 months' probation \$500 restitution
Uptmore, Chance	1:21-CR-00149 - RCL	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 36 months' probation \$500 restitution

Uptmore, James	1:21-CR-00149 – RCL	40 U.S.C. § 5104(e)(2)(G)	21 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	21 days' home detention as a condition of 36 months' probation \$500 restitution
Brooks, James	1:22-CR-00018 – JMC	18 U.S.C. § 1752(a)(1)	3 months' incarceration 12 months' supervised release \$500 restitution	12 months' probation 60 hours' community service \$500 restitution
Rivera, Jesus	1:21-CR-00060 - CKK	18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	9 months' incarceration 12 months' supervised release \$500 restitution	8 months' incarceration 12 months' supervised release \$500 restitution
Horvath, Jennifer	1:22-CR-00192 – BAH	40 U.S.C. § 5104(e)(2)(G)	2 months' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' Probation with special conditions of confinement at a residential reentry center and home detention 90 days' home confinement \$500 restitution
Faulkner, Troy Elbert	1:21-CR-00126 – BAH	18 U.S.C. § 1361	5 months' incarceration 36 months' supervised release \$10,560 restitution	5 months' incarceration 36 months' supervised release \$10,560 restitution
Yazdani- Isfahani, Loammi	1:21-CR-00543 – CRC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	14 days' incarceration 24 months' probation 100 hours' community service \$500 restitution
Yazdani- Isfahani, Abigail	1:21-CR-00543 – CRC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 100 hours' community service \$500 restitution
Yazdani- Isfahani, Loruhmah	1:21-CR-00543 – CRC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 100 hours' community service \$500 restitution
Kelly, Kash Lee	1:22-CR-00208 - JEB	40 U.S.C. § 5104(e)(2)(G)	6 months' incarceration \$500 restitution	60 days' incarceration \$500 restitution

Ashlock, Ryan	1:21-CR-00160 – CKK	18 U.S.C. § 1752(a)(1), (b)(1)(A)	135 days' incarceration 12 months' supervised release 100 hours' community service \$500 restitution	70 days' incarceration 12 months' supervised release 100 hours' community service \$500 restitution
Comeau, Jason	1:21-CR-00629 - EGS	40 U.S.C. § 5104(e)(2)(G)	20 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	12 months' probation including 2 months' home confinement 60 hours' community service \$371 fine \$500 restitution
Schaefer, Jeffrey	1:22-CR-00069 - TFH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 60 hours' community service \$2,000 fine \$500 restitution	30 days' incarceration \$2,000 fine \$500 restitution
Thompson, Dustin	1:21-CR-00161 - RBW	18 U.S.C. § 1512(c)(2) and 2; 18 U.S.C. § 641 and 2; 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	70 months' incarceration 36 months' supervised release \$2,000 restitution	36 months' incarceration 36 months' supervised release \$2,000 fine \$2,000 restitution
Evans III, Treniss	1:21-CR-00225 - DLF	18 U.S.C. § 1752(a)(1)	60 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	36 months' probation with a condition of 20 days' intermittent confinement \$5,000 fine \$500 restitution
Castle, Trudy	1:22-CR-00261 – CRC	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 30 days' incarceration 60 hours' community service \$500 restitution	36 months' probation \$2,000 fine \$500 restitution
DiFrancesco, Kimberly	1:22-CR-00261 - CRC	40 U.S.C. § 5104(e)(2)(G)	36 months' probation 30 days' incarceration 60 hours' community service \$500 restitution	36 months' probation \$2,000 fine \$500 restitution
Hughes, Joshua	1:21-CR-00106 – CKK	18 U.S.C. § 1512(c)(2) and 2	46 months' incarceration 36 months' supervised release	38 months' incarceration 36 months' supervised release

Wood, Matthew	1:21-CR-00223 - APM	18 U.S.C. § 1512(c)(2); 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(C); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	\$2,000 restitution	\$2,000 restitution
Manwaring, Landon	1:22-CR-00270 - CJN	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 35 months' probation \$500 restitution
Panayiotou, Marcos	1:22-CR-00055 - DLF	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation \$500 restitution	14 days' intermittent incarceration 36 months' probation \$1,500 fine \$500 restitution
Wiersma, David	1:21-CR-00592 - ABJ	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	18 months' probation \$1,500 fine \$500 restitution
Presley, Ronnie	1:21-CR-257 - RDM	18 U.S.C. § 231(a)(3)	16 months' incarceration 12 months' supervised release \$2,000 restitution	12 months' incarceration 26 months' supervised release \$2,000 restitution
Frankowski, Dawn	1:21-CR-00592 - ABJ	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	18 months' probation 100 hours' community service \$750 fine \$500 restitution
Buxton, Jonas	1:21-CR-00739 - JDB	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	18 months' probation 40 hours' community service \$500 fine \$500 restitution
Ianni, Suzanne	1:21-CR-00451 - CJN	40 U.S.C. § 5104(e)(2)(D)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	15 days' incarceration 30 months' probation 60 hours' community service \$500 restitution

Tenney, George	1:21-CR-00640 - TFH	18 U.S.C. § 231(a)(3) 18 U.S.C. § 1512(c)(2) and 2	48 months' incarceration 36 months' supervised release \$2,000 restitution	36 months' incarceration 36 months' supervised release \$2,000 restitution
Billingsley, Steven	1:21-CR-00519 - TFH	18 U.S.C. § 1752(a)(2)	6 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	24 months' probation 60 hours' community service \$500 restitution
Cantwell, Lewis Easton	1:21-CR-00089 - EGS	18 U.S.C. § 231(a)(3) and 2	5 months' incarceration Term of supervised release \$2,000 restitution	5 months' incarceration 36 months' supervised release \$2,000 restitution
Reid, William	1:21-CR-00316 - DLF	18 U.S.C. § 1512(c)(1); 18 U.S.C. § 1752(a)(1) and (2); 40 U.S.C. § 5104(e)(2)(D) and (G)	78 months' incarceration 36 months' supervised release \$2,443 restitution	37 months' incarceration 36 months' supervised release \$2,443 restitution
Allan, Tommy Frederick	1:21-CR-00064 - CKK	18 U.S.C. § 1512(c)(2) and 2	24 months' incarceration 36 months' supervised release \$2,000 restitution	21 months' incarceration 36 months' supervised release \$2,000 restitution
Decarlo, Nicholas	1:21-CR-00073 - BAH	18 U.S.C. § 1512(c)(2) and 2	48 months' incarceration 36 months' supervised release \$2,000 restitution	48 months' incarceration 36 months' supervised release \$2,500 fine \$2,000 restitution
Ochs, Nicholas	1:21-CR-00073 - BAH	18 U.S.C. § 1512(c)(2) and 2	51 months' incarceration 36 months' supervised release \$2,000 restitution	48 months' incarceration 36 months' supervised release \$5,000 fine \$2,000 restitution
Gross, Juliano	1:22-CR-00056 - APM	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation, including 45 days' home detention 100 hours' community service \$500 restitution
Sandlin, Ronald	1:21-CR-00088 - DLF	18 U.S.C. § 1512(k) 18 U.S.C. § 111(a)(1) and 2	63 months' incarceration 36 months' supervised release \$20,000 fine \$2,000 restitution	63 months' incarceration 36 months' supervised release \$20,000 \$2,000 restitution
Fassell, Marilyn	1:21-CR-00692 - CKK	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation	30 days' incarceration 36 months' supervised release

Fassell, Thomas	1:21-CR-00692 - CKK	40 U.S.C. § 5104(e)(2)(G)	60 hours' community service \$500 restitution 30 days' incarceration 36 months' probation \$500 restitution	\$500 restitution 7 days' incarceration (intermittent) 24 months' probation \$500 restitution
Rossman, Devin	1:22-CR-00280 – BAH	40 U.S.C. § 5104(e)(2)(G)	90 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	32 days' intermittent confinement 36 months' probation 60 hours' community service \$2,000 fine \$500 restitution
Lattanzi, Nicholas	1:22-CR-00028 - TSC	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation \$500 restitution	14 days' incarceration \$500 fine \$500 restitution
Sargent, Troy	1:21-CR-00258 - TFH	18 U.S.C. § 231(a)(3); 18 U.S.C. § 111(a)(1); 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 18 U.S.C. § 1752(a)(4); 40 U.S.C. § 5104(e)(2)(F)	27 months' incarceration 36 months' supervised release \$2,000 restitution	14 months' incarceration 24 months' supervised release \$500 restitution
Council, Matthew	1:21-CR-00207 - TNM	18 U.S.C. § 231(a)(3); 18 U.S.C. § 111(a)(1); 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	30 months' incarceration 36 months' supervised release \$2,000 restitution	60 months' probation including 180 days' home incarceration 100 hours community service \$2,000 restitution
Hendrix, Nicholas	1:21-CR-00426 - CKK	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	30 days' incarceration 36 months' probation
Jensen, Douglas	1:21-CR-00006 - TJK	18 U.S.C. § 231(a)(3); 18 U.S.C. § 1512(c)(2) and 2; 18 U.S.C. § 111(a)(1); 18 U.S.C. § 1752(a)(1) and (b)(1)(A);	64 months' incarceration 36 months' supervised release \$2,000 restitution	60 months' incarceration 36 months' supervised release \$2,000 restitution

		18 U.S.C. § 1752(a)(2) and (b)(1)(A); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)			
Johnston, David	1:22-CR-00182 - BAH	40 U.S.C. § 5104(e)(2)(G)	42 days' incarceration 36 months' probation \$500 restitution	21 days' intermittent incarceration 90 days' home confinement 36 months' probation \$2,500 fine \$500 restitution	
Capsel, Matthew	1:22-CR-00107 - TSC	18 U.S.C. § 231(a)(3)	31 months' incarceration 36 months' supervised release \$2,000 restitution	18 months' incarceration 24 months' supervised release \$2,000 restitution	
Brodnax, Antionne	1:21-CR-00350 - DLF	18 U.S.C. § 1752(a)(1) 18 U.S.C. § 1752(a)(2) 40 U.S.C. § 5104(e)(2)(D) 40 U.S.C. § 5104(e)(2)(E)	18 months' incarceration 12 months' supervised release \$500 restitution	5 months' incarceration 12 months' supervised release \$500 restitution	
Johnson Jr, Thaddis	1:22-CR-00228 - JDB	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' home confinement 24 months' probation 60 hours' community service \$500 restitution	
Grayson, Kenneth	1:21-CR-00224 - TSC	18 U.S.C. § 231(a)(3)	3 months' incarceration 36 months' supervised release \$2,000 restitution	2 months' incarceration 24 months' supervised release \$2,000 restitution	
McCormick, Michael G	1:21-CR-00710 - TSC	18 U.S.C. § 1752(a)(1)	21 days' incarceration 36 months' probation \$500 restitution	14 days' incarceration \$1,000 fine \$500 restitution	
Bronsbury, Tammy	1:21-CR-00144 - RBW	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	20 days' incarceration 24 months' probation \$500 restitution	
Bond, Stacy Lee	1:22-CR-00171 - JMC	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	20 days' home detention 18 months' probation 50 hours' community service \$500 restitution	

Conlon, Paula	1:22-CR-00171 - JMC	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	12 months' probation \$500 restitution
Hughes, Jerod	1:21-CR-00106 - TJK	18 U.S.C. § 1512(c)(2) and 2	51 months' incarceration 36 months' supervised release \$2,000 restitution	46 months' incarceration 36 months' supervised release \$2,000 restitution
Holdridge, Brent	1:21-CR-00729 - RBW	40 U.S.C. § 5104(e)(2)(G)	60 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' incarceration 36 months' probation \$500 restitution
Gionet, Anthime	1:22-CR-00132 - TNM	40 U.S.C. 5104(e)(2)(G)	75 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	60 days' incarceration 24 months' probation \$2,000 fine \$500 restitution
Witzemann, Shawn	1:21-CR-00314 - TFH	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 7 days of continuous prison 60 hours' community service \$500 restitution
Hand, Charles III	1:22-CR-111 - JEB	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	20 days' incarceration 6 months' probation \$500 restitution
Robinson-Hand, Mandy	1:22-CR-111 - JEB	40 U.S.C. § 5104(e)(2)(G)	45 days' incarceration 36 months' probation 60 hours community service \$500 restitution	20 days' incarceration 6 months' probation \$500 restitution
Clifton, Chadwick Gordon	1:22-CR-00182 - BAH	40 U.S.C. § 5104(e)(2)(G)	21 days' incarceration 36 months' probation \$500 restitution	21 days' intermittent confinement 36 months' probation 90 days' home confinement \$500 restitution
Slaker, Tyler	1:21-CR-00604 - DLF	18 U.S.C. § 1752(a)(1)	3 months' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	30 days' home detention 36 months' probation 240 hours' community service \$500 restitution

Herrera, Erik	1:21-CR-619 - BAH	18 U.S.C. § 1512(c)(2) and 2; 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	78 months' incarceration 36 months' supervised release \$2,000 restitution	48 months' incarceration 36 months' supervised release \$1,000 restitution
Montalvo, Matthew	1:22-CR-00146 - RDM	40 U.S.C. § 5104(e)(2)(G)	30 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	36 months' probation 90 days' home detention \$5,000 fine \$500 restitution
Gable, Levi	1:22-CR-00189 - JMC	18 U.S.C. § 1752(a)(1)	90 days' incarceration 12 months' supervised release 60 hours' community service \$500 restitution	24 months' probation 45 days' home detention 50 hours' community service \$1,000 fine \$25 restitution
Faulkner, Luke	1:21-CR-00725 - RDM	40 U.S.C. § 5104(e)(2)(G)	14 days' incarceration 36 months' probation 60 hours' community service \$500 restitution	24 months' probation 30 days' home detention 60 hours' community service \$500 restitution
Andries, John	1:21-CR-00093 - RC	18 U.S.C. § 1512(c)(2)	24 months' incarceration 36 months' supervised release \$2,000 restitution	12 months' and one day 36 months' supervised release \$2,000 restitution
Rahm, James Jr	1:21-CR-00150 - TFH	18 U.S.C. § 1512(c)(2) and 2; 18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2); 40 U.S.C. § 5104(e)(2)(D); 40 U.S.C. § 5104(e)(2)(G)	21 months' incarceration 36 months' supervised release \$2,000 restitution	12 months' incarceration 36 months' supervised release \$2,000 restitution
McGrew, James	1:21-CR-00398 - BAH	18 U.S.C. § 111(a)(1)	78 months' incarceration 36 months' supervised release \$2,000 restitution	78 months' incarceration 36 months' supervised release \$5,000 fine \$2,000 restitution

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES

v.

LARRY BROCK

Defendant.

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Case No. 1:21cr140

SENTENCING MEMORANDUM

I. Introduction

Mr. Brock is before the Court following his conviction at a bench trial for Obstruction of an Official Proceeding under 18 U.S.C. § 1512(c) and related misdemeanors. As set forth below, Mr. Brock is a man of outstanding character with a remarkable military record and no criminal history. Several of Mr. Brock's fellow veterans have written to the Court to praise Mr. Brock's heroism and integrity, including a retired Major General.

It is undisputed that Mr. Brock did no violent acts on January 6th and in fact acted to restrain disorderly protesters on multiple occasions. In one particularly dramatic episode, Mr. Brock physically intervened to protect two plain clothes Capitol policemen from a group of aggressive protesters.

In many other § 1512 cases, this Court has seen fit to depart downward from the harsh guidelines for this offense, including non-incarceration sentences in some cases. The defense respectfully submits the Mr. Brock's outstanding personal history and actions on January 6th place him firmly among those § 1512 defendants most deserving of lenient treatment for their charges stemming from this unique historical episode.

II. Law of Sentencing

The law requires this Court to impose a sentence sufficient but no greater than necessary to achieve the goals of sentencing in 18 U.S.C. § 3553. The sentencing guidelines must be considered but are not binding on the Court. *United States v. Booker*, 542 U.S. 220 (2005).

III. Sentencing Factors

a. Sentencing Guidelines

The PSR has given Mr. Brock guidelines of 25/I which is a range of 57-71 months. Mr. Brock disagrees with several aspects of this calculation and maintains that the proper guideline should be 12/I which is 10-16 months. The particular objections are addressed as follows:

i. Acceptance of Responsibility

Mr. Brock has objected to probation's decision to award him no points for acceptance of responsibility. Although this is common for trial cases, this case is an exception. As the Court observed at sentencing, few facts were in dispute and the main issue for decision was how the law applied to the facts. This is therefore a case where acceptance of responsibility (or a roughly equivalent variance) is appropriate.

USSG § 3E1.1. n. 2, the acceptance guideline, provides that:

“[c]onviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g. to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that such a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.”

This exception applies here. Mr. Brock filed several pretrial motions including a Motion to Dismiss Count I (ECF 46), a Motion to Change Venue (ECF 47) and a Motion to Compel

Discovery on Selective Prosecution (ECF49). The Court denied these motions. Had the Motion to Compel Discovery on Selective Prosecution been granted, it may have led to a Motion to Dismiss based on Selective Prosecution. Mr. Brock proceeded to trial to preserve his right to appeal these issues.

Mr. Brock's pretrial statements show that he did not deny the basic facts of the case, even if he did not necessarily agree with the federal government's legal theories. Shortly after January 6, Mr. Brock made public admissions to Ronan Farrow of the New Yorker¹. Mr. Brock's pretrial filings implicitly conceded that he was present in the Capitol and indeed even conceded his presence on the Senate floor itself. For example, Mr. Brock argued in ECF 22 that his statements while on the Senate floor that another individual should show respect and not sit in the Vice President's chair was a fact supporting less stringent conditions of release.

Mr. Brock's posture at trial also showed acceptance of responsibility for the essential facts of his case (again, as distinct from the government's legal theories). As the Court will recall, Mr. Brock stipulated to the vast majority of the government's case. Mr. Brock's pretrial motions, pretrial statements, and posture at trial support assessing him 2 points for acceptance of responsibility.

If the Court should conclude that, as a technical matter, Mr. Brock does not qualify for the two points, this Court should impose a comparable variance to reflect that Mr. Brock did not deny the essential facts of his case.

¹ <https://www.newyorker.com/news/news-desk/an-air-force-combat-veteran-breached-the-senate>

ii. The PSR's Enhancements for Property Damage and Substantial Interference Should Not be Assessed

The PSR gives Mr. Brock an 8-level enhancement for causing or threatening to cause physical injury to a person or property damage under § 2J1.2(b)(1) and an additional three levels for “substantial interference” under (b)(2). PSR ¶ 52-53. However, neither enhancement is implicated unless the conduct interferes with “the administration of justice.” The phrase “administration of justice” refers to judicial proceedings. *See, e.g., United States v. Richardson*, 676 F.3d 491, 502-502 (5th Cir. 2012)(“[O]bstructing the due administration of justice means interfering with the procedure of a judicial hearing or trial.”). The electoral count before Congress does not constitute a “judicial hearing or trial” so these enhancements do not apply. This Court adopted this interpretation of the enhancements in *United States v. Hale-Cusanelli*, 21-cr-37-TNM.

Moreover, the PSR incorrectly bases the 8-level enhancement on social media posts. PSR 52. By the enhancement’s very terms the “offense” must “involve[]” threatening to cause physical injury to a person, or property damage.” The posts in question were made before the offense and were not directed at any specific person. The PSR acknowledges the messages in question were from Mr. Brock to “a friend.” On January 6th itself, Mr. Brock did not make threats. As the PSR states, “Mr. Brock did not engage in violent acts while inside the Capitol, and in fact stopped violence from occurring inside the Capitol.” *Id.* Thus, even if this offense had involved the “administration of justice”, the 8-level enhancement would not apply.

b. History and Personal Characteristics

i. Early Life and Education

Mr. Brock is a native of Texas and comes from a family with a strong military tradition. ECF 68. After graduating from high school as salutatorian (2nd highest GPA out of 612

graduates) Mr. Brock attended the Air Force Academy and graduated in 1989. Even as a cadet, Mr. Brock already possessed the strong sense of integrity that would allow him to be successful in the Air Force. We proffer that a classmate of Mr. Brock's has written the following:

Larry lived the Cadet Honor Code at the Air Force Academy...I recall a time when he was just a couple minutes late for sign-in at the dormitory. No one else was around. He easily could have written down that he had been on time, but he didn't. He put his actual arrival time knowing it would result in the loss of some free time privileged on the next weekend. That, to me is integrity – doing the right thing even when no one is watching.

Mr. Brock would go on to spend the bulk of the next thirty years serving his country in military and civilian capacities.

ii. Mr. Brock's Military Service

After graduating the Academy, Larry Brock served in the Air Force in some capacity for the next 25 years. He served on active duty from 1989 until 1998. PSR ¶ 89. He served in the reserves until 2014. PSR ¶ 91. He was honorably discharged at the rank of Lt. Colonel. *Id.* He flew the A-10 Warthog and served as recruiter for the Academy. *Id.*

Mr. Brock made many deployments including as a reservist. Between 1998 and 2007 he was deployed at least once per year. *Id.* He flew 350 combat hours and 1500 hours piloting a King Air military aircraft and reconnaissance missions. PSR ¶ 93. Mr. Brock received the following decorations for his service:

- Air Medal with four devices;
- Air Force Achievement Medal;
- Aerial Achievement Medal with three devices;
- Air Force Longevity Service Award with two devices;
- Air Force Training ribbon;
- Southwest Asia Service Medal with two devices;

- Air Force Overseas Long Tour Ribbon;
- National Defense Service Medal;
- Humanitarian Medal;
- Small Arms Expert Marksmanship Ribbon with device;
- Kuwait Liberation Medal;
- Air Force Outstanding Unit Award with two devices.

Mr. Brock's five Air Medals merit some additional comment. The Air Force sets forth the criteria for this award as follows:

The Air Medal is awarded to U.S. and civilian personnel for single acts of heroism or meritorious achievements while participating in aerial flight and foreign military personnel in actual combat in support of operations.

Required achievement is less than that required for the Distinguished Flying Cross, but must be accomplished with distinction above and beyond that expected of professional airmen. It is not awarded for peace time sustained operational activities and flights.²

Several of Mr. Brock's fellow veterans have written to the Court to praise his character and describe some of the missions which led to these awards. We proffer that a fellow officer recalls Mr. Brock's service as follows: "[Mr. Brock]'s flying capabilities far exceeded the performance of other pilots in his peer group." For example:

On likely the most complex mission I flew in my 28 year Air Force career, [Mr. Brock] calmly and methodically led a large aircraft package night combat search and rescue training mission with over 40 aircraft in support for a "downed airman"...Larry pushed me to fly better and pushed others to be better people, pilots and officers.

We proffer that a retired flag officer recalls Mr. Brock's service in Afghanistan as follows:

² <https://www.afpc.af.mil/Fact-Sheets/Display/Article/421927/air-medal/>

As the unit prepared for a combat deployment in 2004, Larry's expertise was evident, and he quickly rose to the top of my pilot list. On that deployment, Larry risked his life to protect US forces under attack from Taliban elements. At night, in challenging mountainous terrain, he flew below mountain peaks into a valley saturated with enemy forces and successfully employed ordinance. The result thwarted enemy advances on US personnel, saved US lives and defused an ever-escalating situation for the forces at that remote base in Afghanistan. For his actions, Larry was eventually awarded an Air Medal in part for that mission and promoted to the rank of Lieutenant Colonel.

Mr. Brock's decorations and the praise of those he served with and under make clear that his military record should be judged exceptional. It is an important mitigating factor in this case.

iii. Mr. Brock's Character and Other Good Works

While Mr. Brock's wartime heroics are certainly significant, the way he treats other people in everyday situations when no one is looking is equally so. Several individuals have written to the Court to describe works of charity and kindness by Mr. Brock. For example, we proffer that one acquaintance recalls the following:

This Fall I witnessed Larry being approached in a Wal-Mart by an expectant mother with children that shared she was homeless and in need of food. Without hesitation, he bought the mother and children a meal, groceries for later, as well as some money. When I asked, "What if she was lying to you? What if she was just trying to take advantage of you?" He responded, "I have to do the right thing."

A former service member recalls that:

On another deployment, I recall a junior enlisted member...pleading for his help with a military pay issue. Military pay had incorrectly misplaced a decimal on his pay statement by two decimal positions. The enlisted member was paid less than \$10.00 on his mid-month pay statement. I remember Larry getting involved in this pay issue that actually affected several other members as well, even offering to help one of them financially without hesitation because the military pay office was slow to help. Larry's persistence was a key element in effectively resolving this young airman's pay issue.

An acquaintance also recalls an episode where Mr. Brock went above and beyond in his new profession of home inspector:

This personal moral compass stemming from his sacred beliefs guides Larry not only as he gives back through charity but also throughout his business dealings...I have been present for a few customer exchanges where he has gone above for the best customer services. Larry has allowed his business to absorb losses to remove even the shadow of a doubt that a customer may have had. On one occasion, a customer believed Larry had overlooked a certain quality check in his work. He took as many phone calls as needed to walk the customer, as well as the customer's relatives, through the quality control process, explaining each requirement.

These seemingly minor anecdotes about how Mr. Brock treats others are in fact not minor at all. They show the Court that Mr. Brock is a man of high character and a love for his fellow man. Mr. Brock would never have appeared in a criminal Court were it not for the extraordinarily unique confluence of events that led to January 6th.

iv. Mr. Brock's Family Responsibilities

In the post-*Booker* era, district courts have developed an established practice of varying downward from the guidelines where the effect of the defendant's incarceration on innocent third parties would be extreme and the defendant would not pose an ongoing threat to society. *See, e.g. United States v. Antonakopoulos*, 399 F.3d 68 (1st Cir. 2005)(on remand of bank fraud case, district court may consider defenant's role as caretaker for brain-damaged son even though alternative means of care existed); *United States v. Lehman*, 513 F.3d 805 (8th Cir. 2008)(sentence of probation affirmed where justified by atypical nature and circumstances of the felon in possession case and by the defendant's need to care for her nine-year-old developmentally disabled son); *United States v. Crawford*, 2007 WL 2436746 (E.D. Ws. 2007)(variance granted in part due to impact incarceration would have on defendant's five children); *United States v. Bortnick*, 2006 WL 680544 (E.D. Pa. 2006)(seven day sentence despite 51-63 guidelines in part based on defendant's responsibility for severely handicapped son).

These precedents apply in this case because Mr. Brock has above average family responsibilities. As set forth in the PSR, Mr. Brock's parents divorced when he was very young and remarried. PSR ¶ 68. Both parents' second marriages proved lasting and Mr. Brock is close with both "sets" of parents. Mr. Brock's parents and stepparents are now of advanced age and Mr. Brock is heavily involved in caring for them. We proffer that an acquaintance would state as follows:

Larry cares for not one but two sets of elderly parents in frail health as well. He is the only child that lives locally for both his mother and stepfather as well as his father and stepmother. He takes this responsibility very seriously with several calls and visits to each parent each week. Just this last week, Larry assisted with taking down Christmas decorations and hauling them up to the attic for his father and stepmother as they are unable to lift boxes. Larry's father is confined to a wheelchair so also requires additional support from Larry as well as his stepmother. The week prior, he spent an afternoon shopping for quality ingredients from a nice grocery store and a day cooking chili to bring to his mother and stepfather for a Christmas Day meal.

If Mr. Brock is incarcerated, 4 innocent senior citizens will be deprived of their most important source of companionship and care. It is completely appropriate for the Court to take this fact into account when deciding Mr. Brock's sentence.

c. Facts and Circumstances of the Offense

i. Issues Surrounding the 2020 Election

The January 6th rally occurred in response to allegations of fraud and illegality in the 2020 Presidential election. As is well known, the President of the United States, the former Mayor of New York during 9/11, a retired four-star Army general and other luminaries publicly shared their belief that the purported result of the 2020 election was called into question by evidence of potentially material fraud and/or illegality. Sitting congressmen and senators publicly announced in the weeks leading up to January 6 that they shared these concerns. It should not be a matter of surprise that many Americans of good faith took these concerns

seriously. As of September 2022 nearly a third of Americans stated in a poll outcome determinative fraud took place in the 2020 election.³

It is of course not necessary for this Court to decide the extent to which fraud and illegality existed in the 2020 election in order to impose a sentence. However, it is necessary for the Court to make some assessment as to whether Mr. Brock's actions were motivated by a genuine concern over this issue or whether he participated in the rally for some other reason. If Mr. Brock was sincerely motivated by high ideals, it significantly reduces his culpability even if the Court should privately disagree with his view. It distinguishes him from rabble rousers, violent actors, and other truly criminal elements in the January 6th disturbances.

Based on all the information in the record of this case, it should not be difficult for this Court to conclude that Mr. Brock traveled to DC on January 6 out of a genuine concern that something terrible happened in the 2020 election that called for vigorous exercise of the First Amendment right to protest. One after another, his character references describe Mr. Brock's honesty and patriotism. It is inconceivable that he was motivated by anything other than genuine concern for democracy.

ii. Mr. Brock's Role on January 6th

This Court will well recall the evidence in Mr. Brock's case from his bench trial. It was undisputed that Mr. Brock was not a member of any suspect group (or any group) that participated in the January 6 rally. He traveled from his home to Washington, DC alone.

The government's evidence showed Mr. Brock attending President Trump's speech at the ellipse and then walking peacefully to the Capitol in the midst of a crowd of thousands. Mr.

³ <https://www.nbcnews.com/meet-the-press/meetthepressblog/poll-61-republicans-still-believe-biden-didnt-win-fair-square-2020-rcna49630>

Brock walked by several law enforcement officers on his way to the Capitol building who did not attempt to forestall him or the other persons in the crowd. He entered the Capitol without force through one of the doors on the West side.

While in the building, evidence showed Mr. Brock proceeding peacefully through the hallways, stopping briefly to admire the Rotunda. He can be seen retrieving the police “flex cuffs” he would later be photographed carrying from the floor by a doorway on the side of the rotunda. Mr. Brock then proceeded up some stairs.

As the Court will recall, Officer Nairobi Timberlake of the Capitol Police testified that while working the Capitol in plain clothes, he encountered Mr. Brock near one of the doorways to the Senate chamber. The officer testified that when some particularly aggressive protesters attempted to fight him and one of his fellow officers, Larry Brock intervened to protect the police. Had it not been for Mr. Brock’s decisive action and willingness to put himself at risk, the officers may have been harmed.

Mr. Brock continued to use his imposing physical stature and military command presence to maintain order in the Capitol whenever anyone got out of hand. On multiple occasions Mr. Brock can be seen on video imploring fellow demonstrators to be respectful of the Capitol. While Mr. Brock walked through the vacant Senate Gallery, another individual ascended the rostrum and seated himself in the President of the Senate’s chair. Mr. Brock addressed the man as follows: “get out of that chair...it belongs to the Vice President of the United States, it’s not our chair. Look, I love you guys, we’re brothers, but we can’t be disrespectful.” When another individual protested that “they stole an election” Mr. Brock insisted that they must maintain respect. Although they were not all caught on video, Mr. Brock admonished others to respect the Senate Gallery on several occasions.

After exiting the Senate Gallery peacefully, Mr. Brock eventually found his way to a law enforcement officer and asked to be escorted out of the building. The officer obliged and accompanied Mr. Brock to an exit where he willingly left the Capitol. On his way out, Mr. Brock encountered a shirtless man behaving aggressively towards a line of police. On CCTV footage, Mr. Brock can be seen placing his arm around the man and gently escorting him away from his confrontation with the police and out the Capitol door.

To be sure, Mr. Brock made many ill-advised statements on social media about the 2020 election. As multiple character references attest, Mr. Brock is a man of passionate convictions. As a combat aviator, he is not immune from the machismo culture that decades in the military can inculcate. And, he is far from the only individual who unburdened themselves on social during that stressful period in our nation's history. However, Mr. Brock respectfully submits that his actions on January 6th should carry more weight than any social media activity.

d. Avoid Unwarranted Sentencing Disparities

While those who assaulted law enforcement or committed other violent acts on January 6th have rightly received serious sentences, this Court has seen fit to treat other types of defendants more leniently. The following comparator cases should place Mr. Brock's case in the proper context:

i. *United Stats v. Matthew Wood*, 21-CR-223-APM- Home Confinement for Defendant Convicted of Felony

Mr. Wood entered a straight plea (no agreement) to Obstruction of an Official Proceeding under 18 U.S.C. § 1512 (c) in addition to all of the routinely charged January 6th misdemeanors. ECF 55 at 66. Like Mr. Brock, Mr. Wood left a digital trail of incendiary comments leading up to January 6th. *Id.* at 2. Unlike Mr. Brock, he was one of the first persons to enter the capitol and one of the last to leave (80 minutes inside). *Id.* at 2, 5. Mr. Wood and others chased Capitol

police through the building. *Id.* at 3. He “directly pushed against MPD officers attempting to clear the Rotunda.” *Id.* at 4.

Mr. Wood argued for a sentence of home confinement based on, among other things, his lack of violence in the Capitol, humble origins, and strong work history. ECF 56. The Court gave Mr. Wood concurrent terms of 36 months’ probation with the first 12 months to be served on home confinement.

ii. *United States v. Nicholas Rodean*, 1:21cr57 – TNM – Home Confinement for Defendant Convicted of Felony

Mr. Rodean entered the Capitol by smashing a window with a flagpole and a metal object. ECF 67. He was one of the first to enter the Capitol. He was convicted of felony destruction of property and a collection of misdemeanors following a bench trial. The Court sentenced him to 6 months of home confinement. ECF 75. To be sure, Mr. Rodean had personal mitigating factors which Mr. Brock does not have.⁴ However, Mr. Brock destroyed no property and has his own unique mitigating factors most notably his extraordinary military record. Taking all these factors into account, the § 3553 calculus for the two men comes out roughly the same.

iii. January 6th Misdemeanor Cases Where the Government Could Have Charged Obstruction But Did Not

The government’s charging decisions in the January 6th cases themselves create unwarranted disparities between defendants with similar conduct and criminal histories. For the most part, the government did not bring felony charges against persons who entered the Capitol building but did not assault police or destroy property. Many of these defendants did not receive

⁴ <https://www.politico.com/news/2022/10/26/jan-6-rioter-gets-probation-not-prison-after-judge-finds-autism-played-a-role-00063588>

any jail or prison. However, under the obstruction theory the government advanced in this Court and is currently defending before the Circuit Court, such persons could certainly have been charged with Obstruction of an Official Proceeding, triggering sentencing guidelines of years in prison. After all, they were part of the group of persons whose entry of the Capitol interrupted the “official proceeding” of the vote certification.

It is undisputed that Mr. Brock did not destroy property or assault police, yet he has received a felony obstruction charge. The government’s reasoning for this decision was that Mr. Brock entered the Senate gallery, which the government views as a significant aggravating factor. The government does not dispute that Mr. Brock entered the gallery after the proceedings had already adjourned or that he did not damage property in the gallery. In the government’s view, his mere presence in that section of the Capitol justifies charging him differently than those who occupied other parts of the Capitol.

Mr. Brock submits that giving persons who entered other parts of the Capitol misdemeanors with no jail while those who nonviolently entered the Senate Chamber get felonies and (if the government has its way) years in jail is an unwarranted disparity. Assessing a downward variance in favor of Mr. Brock would bring his case into more of a rational relation with misdemeanor defendants whose culpability is not all that much less than his and whose personal mitigating factors may be much less weighty.

iv. Other Protest Activity in 2020/21

As the Court will recall, substantial protest activity occurred in the United States throughout 2020 involving participants from across the political spectrum. Many observers have noted that the January 6th defendants seem to have been prosecuted more harshly than protestors motivated by “liberal” causes more closely associated with the current Presidential administration such as

police reform. The most comparable cases are the prosecutions (or lack thereof) stemming from riots at the Hatfield Federal Courthouse in Portland Oregon in 2020. Portland's federal courthouse was the focus of intense protest activity for more than 90 consecutive nights⁵ following the death of George Floyd during a police encounter in Minnesota. In one court filing, the government described the protests as follows:

[The protests] [w]ere followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. One violent event impacting federal property occurred on May 28, 2020, when the Portland Field Office for the Immigration and Customs Enforcement (ICE) was targeted by a Molotov cocktail. The Mark O Hatfield Courthouse has experienced significant damage to the façade, glass, and building fixtures during the weeks following this incident. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. The most recent repair estimate for the damage at the Mark O. Hatfield Courthouse is in excess of \$50,000. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. FPS law enforcement officers, U.S. Marshal Service Deputies and other federal law enforcement officers working in the protection of the Mark O. Hatfield Courthouse have been subjected to assault, threats, aerial fireworks including mortars, high intensity lasers targeting officer's eyes, thrown rocks, bottles and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

United States v. Bouchard, 3:20-mj-165 (D.Ore. July 24, 2020), ECF 1-1 at 4-5. The protests involved thousands gathering on a nightly basis. *United States v. Judd*, 579 F.Supp.3d 1, 8, *10 (D.D.C. December 28, 2021). Despite these enormous numbers, federal prosecutors limited themselves to charges against a few dozen persons, mostly involving property destruction or assaulting law enforcement.⁶ Many of these cases were later dismissed or resolved with extremely favorable plea bargains.⁷ A handful of Portland protesters were charged with lesser

⁵ <https://www.justice.gov/usao-or/pr/74-people-facing-federal-charges-crimes-committed-during-portland-demonstrations>

⁶ *Id.*

⁷ <https://www.kgw.com/article/news/investigations/portland-protest-cases-dismissed-feds/283-002f01d2-3217-4b12-8725-3fda2cad119f>;

offenses. *See, e.g. United States v. Ian Wo,f*, 3:20-cr-286, ECF 1 (D. Ore.)(Information charging Creating a Hazard on Federal Property under 41 C.F.R. § 102.74.380(d) and Failing to Obey a Lawful Order under 41 C.F.R. § 102.74.385). The overwhelming majority of the persons involved in the Portland protests were not charged with any offenses. This Court described the federal response to the Portland protests in *Judd* as follows:

Therein lies a troubling theme that emerges from a wholesale analysis of the Government’s decisions in Portland. The Government dismissed 27 cases brought against Portland defendants, including five felony cases. *See generally* Appendix to Def’s Mot. Dismissal of one felony case is unusual. Dismissal of five is downright rare and potentially suspicious. Rarely has the Government shown so little interest in vigorously prosecuting those who attack federal officers.

Judd, 579 F.Supp.3d at 7. The “appendix” referred to in this passage is attached as Exhibit 2. It is a charge of the various Portland cases and their dispositions.

The extraordinarily lenient treatment afforded to the Portland rioters supports a downward variance for Mr. Brock to avoid an unwarranted disparity. This is particularly necessary because the disparity could reasonably be interpreted to have been created by political bias in the Department of Justice, which is especially odious.

e. Collateral Consequences of this Case

This case is not only Mr. Brock’s first felony conviction but his first criminal conviction of any kind.⁸ As a convicted felon, Mr. Brock will suffer immense social stigma and be prevented from voting or owning firearms. Mr. Brock has long history of civic engagement and responsible use of firearms, so these are significant consequences.

But there are collateral consequences in this case that exceed the normal felony case. As of January 6, 2021, Mr. Brock was working as a commercial airline pilot. PSR ¶ 98. The FAA

⁸ A disorderly conduct misdemeanor in 2014 was deferred and then dismissed.

revoked all his licenses in March 2021 as a result of this case, stating that Mr. Brock “pose[d], or are suspected of posing, a risk of air piracy or terrorism, or a threat to airline or passenger safety.” *Id.* Mr. Brock was therefore forced to abandon a career that he loved and was uniquely qualified for.

At age 53 Mr. Brock went back to school to start a new career as a home inspector. Despite the unfortunate circumstances, Mr. Brock threw himself into his new trade with characteristic aplomb. As his stepfather has written to the Court:

Despite the trauma of the past two years Larry has done a remarkable job of building a new business. He started a real estate inspection company and has worked very hard in establishing himself in that market with the intent of being able to support himself and his son.

Ex. 1.

Although Mr. Brock has made a success of his new calling, his income and standard of living have taken an unavoidable hit. His income has dropped from \$14,000 per month as a commercial airline pilot (PRS ¶ 100) to just over \$5,000 per month as a home inspector (PSR ¶ 97). Most unfortunately, Mr. Brock’s vast experience as an aviator is going to waste.

In addition to losing his career as a pilot, the Air Force Academy’s Association of Graduates “AOG” has revoked Mr. Brock’s membership. He will be unable to attend any future AOG functions commemorating the service academy which held such a special place in his life and career.

Finally, Mr. Brock has already been forced to endure conditions of pretrial supervision far beyond what was warranted. At the start of the case, the government sought to have Mr. Brock detained. An out-of-district judge refused detention but put Mr. Brock on house arrest. Mr. Brock remained on house arrest status for seven months before this Court agreed to relax his conditions (Mr. Brock has subsequently shown that this Court’s trust in him was not misplaced).

Thus, before even getting to sentencing, Mr. Brock has served a term of home confinement comparable to some post-sentencing felony defendants such as the *Wood* and *Rodean* cases discussed above.

In sum, the collateral consequences to Mr. Brock have been far above the typical felony case and support a downward variant sentence.

f. General Deterrence

As has been widely reported, over 800 people have been prosecuted for their roles on January 6th. Their sentences have ranged from probation to years in prison. Their cases have been widely reported in the media, as have judges' comments about the seriousness of the cases. Such a large number of related cases gives this Court more flexibility to show measured leniency in cases with significant mitigation without sacrificing much in the way of general deterrence.

g. Specific Deterrence

As mentioned above, January 6th was a unique historical event stemming from a confluence of unique factors unlikely to be repeated. Most of the January 6th defendants likely had little or no criminal history and Mr. Brock in particular is notable for his long history of respect for the law. We submit that specific deterrence need not be a driving factor in this sentencing.

IV. Conclusion

For the foregoing reasons, Mr. Brock requests a sentence home incarceration for an appropriate period of time.

Respectfully submitted,
By: /s/ Charles Burnham
Charles Burnham
D. Md. Bar 12511
Attorney for Defendant
BURNHAM & GOROKHOV, PLLC
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Washington, DC 20005
(202) 386-6920 (phone)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing has been served on opposing counsel by email.

By: /s/ Charles Burnham
Charles Burnham
D. Md. Bar 12511
Attorney for Defendant
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January 4, 2023

The Honorable John D. Bates

United States District Court Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue, Northwest
Washington, DC 20001

RE: CASE NO. 21-CR-140 (JDB)

Defendant: Larry Brock

Dear Judge Bates,

As the step-father of Larry Brock, and have been since he was twelve (12) years of age, I have watched him excel in school, sports, and in the achievement of one of his goals in graduating from the Air Force Academy and becoming a United States Air Force pilot. Larry has always been respectful of those in authority, and he worked hard at any goal he has wanted to achieve. His mother Lynda and I have been married since 1980 and we raised a blended family with Larry being the oldest of our four children.

I can attest to the fact that in high school Larry was academically a top student, he participated in track and field events, he was on the honor roll, active in our church, and upon graduation he was accepted at and attended the Air Force Academy. After graduation Larry began pilot training where he served in the United States Air Force rising to the rank of Lieutenant Colonel. He continued his service as a reserve officer for several years. During his time with the Air Force he was deployed multiple times to both Iraq and Afghanistan flying the A-10 jet in the protection our ground forces. He received commendations from the Air Force for his service.

Our service men and women are trained to defend and protect these United States, and from that training and service Larry develop a strong sense of love and devotion to our country and the principles upon which this nation was founded. From this devotion we find true patriots; including those who perhaps stepped over the line, as asserted by the assistant U.S. Attorney, but, in Larry's situation I know him and believe his motives were pure and without any preconceived plan or notion of violating federal law.

As testified to at the trial, Larry demonstrated a desire to preserve the respect due the congressional environment, he was respectful to the police, and absolutely did no harm to property or persons.

Although Larry's case resulted in a conviction, he was not accused of membership in any suspect group, possession of weapons, destruction of property, assaulting law enforcement or any violent act. To the contrary, the U.S. Attorney's Office and FBI all acknowledged that Larry acted on multiple occasions to restrain other demonstrators who were acting in a disorderly manner. It is my understanding Larry can be seen on video admonishing other protesters against disorderly behavior and using his physical presence to restrain them. Officer Nairobi Timberlake of the Capitol Police testified that when he and two other officers were assaulted by a large group of aggressive protesters, Larry intervened to defuse the situation and protect the police.

This is Larry's first offence and it is for entering our Capitol building for a short time.

Larry has sustained emotional and economic repercussions stemming from the January 6 events. He not only lost a job flying for a corporate employer, he also lost his primary income source when the FAA revoked his license to fly.

Despite the trauma of the past two years Larry has done a remarkable job of building a new business. He started a real estate inspection company and has worked very hard in establishing himself in that market with the intent of being able to support himself and his son.

We respectfully ask that your decision be tempered in light of Larry's good character, his respectful conduct on January 6th in our Congressional building, his service to our country, and his desire and need to be home where he can work to support his eight (8) year old son. Benjamin, Larry's son, is very close to his dad and if Larry is required to serve any time Benjamin will also suffer.

Your Honor, I practiced law here in Texas for fifty (50) year before retirement. I do respect the position you hold and the responsibility such service entails. During my years of practice, one of my observations has been that folks of good character can and do make mistakes resulting in criminal filings. However, non-violent first offenders, when given a second chance by our court system, respond positively. The lesson is learned, they repent and move on as good citizens.

Larry's mom and I know our son, he is a good man, he has learned the lesson, and we respectfully ask that your decision is one that does not include incarceration.

Sincerely

Lowry H Davison

Last updated: September 24, 2021

PORTLAND FEDERAL COURTHOUSE PROTEST CASES

Protestors gathered beginning on May 26, 2020, in various public areas in Portland to protest including the Lowndesdale Square, Chapman Square and Terry Schrunk Plaza. The Portland Justice Center, which houses Portland Police Bureau's Central Precinct and the Multnomah County Detention Center borders these parks, as does the Mark O. Hatfield United States Federal Courthouse (hereinafter "Courthouse"). The entire city block occupied by the Courthouse is owned by the USA. The Courthouse was a target of violent protestors and experienced significant damage to the façade, glass and building fixtures in the weeks following the initial protests. Some 74 people were charged by the U.S. Attorney's Office for the District of Oregon.

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Completed Cases					
Evan Kriebbaum	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00178	Dismissed without prejudice	Picked up a recently launched tear gas canister. Officers moved to detain him (affidavit says there was no intent to arrest him) for officer safety. No indication that Kriebbaum tried to throw the canister, but he resisted the officers and tried to escape by swinging his arms and wriggling. Swung his elbow back and hit an officer in the face. Kriebbaum stated that he didn't realize they were police at the time and that he complied once he realized they were police. The officers were wearing protective gear marked "POLICE", but it was the early morning hours.
Gretchen Margaret Blank	18:111(a)(1) ¹ - Assaulting a Federal Officer	Yes	3:20-cr-00224	Dismissed with prejudice (DRA) ²	Blank pushed an officer in the back with a "flimsy" plastic shield when he was attempting to arrest another protestor. The

¹ Felony

² Deferred resolution agreement.

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Brodie Storey	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00330	Dismissed with prejudice (DRA)	officer "[los[t] his balance." The shield was recovered (pictures in the affidavit). Officers declared an unlawful assembly and tried to disperse a line of protestors. The affiant alleges that Storey attempted to tackle a deputy U.S. Marshal. The Marshal then tried to arrest Storey, who violently resisted until he was tased.
Caleb Wills	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00296	Dismissed with prejudice (DRA)	The alleged victim, a Deputy United States Marshal was assisting another officer with an arrest when he was allegedly attacked by three individuals, including Wills. The assailants grabbed and punched the victim and attempted to take off his mask. Two of the assailants escaped, but Wills was arrested. Wills has a criminal history (absence without leave from the TN National Guard, probation violation, drug manufacture, delivery and sale, possession of drug paraphernalia and failure to appear) and has active warrants for burglary and felony breaking and entering.
Christopher Fellini ³	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00212	Dismissed without prejudice	Fellini allegedly shined a green laser at officers. Fellini was tackled and arrested and an officer was hurt in the process (he fell when trying to grab Fellini). Fellini was

³ <https://www.justice.gov/usao-or/pr/seven-arrested-facing-federal-charges-after-weekend-riots-hatfield-federal-courthouse>

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
David Michael Bouchard	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00165	Dismissed without prejudice	carrying Mace-brand "Pepper Gel" and a small knife. Bouchard was told to leave an area. A CBP officer placed a hand on Bouchard's shoulder to move him, when Bouchard put the officer in a headlock. A second officer attempted to remove Bouchard's arm from the first officer and the group ended up in a pile on the ground. Bouchard was arrested. Bouchard admitted that he placed his right arm around the neck and shoulders of the officer, but stated that his intent was not to hurt anyone and was just to "stand his ground."
Jeffrey Cheyenne Cary	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00329	Dismissed with prejudice (DRA)	Cary used a shield to knock an officer in the back. Cary was then detained and arrested.
Jordan Matthew Johnson	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00179	Dismissed without prejudice	Johnson allegedly tried to pick up a smoke grenade that had been activated by law enforcement. Officers tried to stop him with rubber bullets, but eventually tackled him to the ground and placed him under arrest for failing to disperse. While he was being arrested, Johnson allegedly struck an officer in the neck, another in the head and resisted arrest. Johnson was subsequently interviewed and denied being aware that the people he was tackled by were police officers. He saw

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Joshua Webb	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00169	Dismissed without prejudice	camouflage uniforms and denied attacking anyone. Once he was handcuffed, he stopped resisting. Johnson has a criminal history from 2007 to 2013 in Oregon, which includes DUI, failure to appear and probation violations.
					Webb allegedly struck an officer in the face with a shield and then punched him in the face with a closed fist. Webb was then arrested and pulled his arms away in resistance. Webb stated that he did not hear any warnings given by FPS and PPB to leave the area and that he was tackled and arrested when he was starting to back up. Webb was wearing tactical equipment (tactical vest, shin guards, gloves).
Patrick Stafford	18:111(a)(1) ⁴ - Assaulting a Federal Officer	Yes	3:20-cr-00295	Dismissed with prejudice (DRA)	Stafford allegedly slammed into an officer with a shield while another protestor (Storey) was being arrested to help him get away. Once on the ground, Stafford was compliant and obeyed all commands.
Stephen O'Donnell	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00166	Dismissed without prejudice	O'Donnell was allegedly shining a flashlight at a CBP agent. The agent identified himself as a "Border Patrol Agent" and told O'Donnell to show him his hands. O'Donnell threw something at the agent's

⁴ Felony

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Taylor Charles Lemons	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00374	Dismissed without prejudice	face. The agent wasn't sure what the object was, but said it was hard (no injuries). O'Donnell was then arrested. Lemons allegedly charged at a USMS tactical team carrying a home-made shield. He was repelled with a marshal's arm, which Lemons then struck with the shield. Lemons violently resisted arrest ("twisting, turning, and fighting"). Lemons was arrested while other protestors were throwing objects at law enforcement and while officers were trying to secure the courthouse. Lemons was arrested and searched. He was carrying a Luger LCP pistol with 6 rounds loaded. Lemons had a valid CCW permit.
Thomas Johnson	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00170	Dismissed without prejudice	Johnson allegedly struck an officer in the face with a homemade shield. Johnson was carrying an ASP baton, OC spray, steel-plated body armor, a helmet, shin guards, gas mask, goggles.
Travis Williams	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00331	Dismissed with prejudice (DRA)	Williams was allegedly yelling: "Take your mask off! Let's go." Williams lunged towards the neck and face of an officer and another officer attempted to arrest Williams. Williams violently resisted and pulled the officers over a park bench, ripped off "communication sets" from both officers' vests and ripped part of one officer's ballistic

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Jennifer Lynn Kristiansen	18:111(a)(1) - Assaulting a Federal Officer (1) 40:1315 and 41 C.F.R. 102-74.385 Failing to Obey a Lawful Order (2)	Unknown	3:20-cr-00245	Count 1 Dismissed with prejudice Count 2 Dismissed without prejudice	vest partially off his body. Williams was tased to no effect and continued to fight. Williams went limp while the officers were leading him away and screamed that they would need to carry him if he was going to be arrested. Williams continued resisting after being transported to the courthouse. He tried to whip deputies with his hair and tried to break a deputy's arm with his elbow and body weight. Williams said: "I almost ripped your buddy's arm off. I'm a state wrestler."
Giovanni Terrence Bondurant	18:111(a)(1) ⁵ - Assaulting a Federal Officer	Yes	3:2020cr00302	Dismissed with prejudice (DRA)	A 37-year-old Portland family law attorney. She <u>claims</u> she was protesting with the "Wall of Moms" when she was separated from the group and groped and assaulted by officers. A Border Patrol Agent approached Bondurant who was equipped with a shield and had been throwing rocks and bottles with another protestor. The agent told the pair to put down their shields. They refused and tried to leave, when they were grabbed by

⁵ Felony

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
					officers. Bondurant struck an officer trying to free the other person, Yarnell. Bondurant told officers that he was in the park with his friend when they were approached by officers. He said that they had found the shields on the ground. Bondurant claimed he didn't throw anything and that he had merely tried to help his friend when he was being arrested. Bondurant denied striking the officer and said the officers were dressed in camouflage.
Taimane Jame Teo	18:111(a)(1) - Assaulting a Federal Officer		3:2020-cr-00205	Dismissed without prejudice	Teo was accused of assaulting officers with a laser. Known as "Zouk" in the BLM community. A GoFundMe was created for him and had raised \$4,050 as of July 7, 2020.
Benjamin Wood-Pavich	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20-cr-00209	Dismissed without prejudice	No details available.
Gabriel Huston	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20-cr-00252	Dismissed without prejudice	No details available. It looks like he's a philosophy major at Portland State University. ⁶

⁶ <https://www.facebook.com/PDXCLAS/posts/3257374180953442-0>

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Pablo Avvacato	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20-cr-00278	Dismissed without prejudice	No details available. Avvacato was previously arrested at a reservoir protest. ⁷
Douglas Dean	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20-cr-00279	Dismissed without prejudice	No details available.
Rebecca Mota Gonzalez	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:2020mj00168	Dismissed with prejudice	Gonzalez stood in front of officers and refused to comply with orders to disperse. As an officer reached for Gonzalez, she struck him with a closed fist and then was handcuffed and arrested after minor resistance.
Joshua Webb	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-mj-00169	Dismissed with prejudice	Webb was ordered to disperse, but refused and struck an officer in the face with a shield and punched the officer with a closed fist when approached. Webb resisted arrest, but was eventually handcuffed. Webb stated that he did not hear any warnings to leave the area and was backing up to leave when he was tackled and arrested. Webb was wearing a black tactical vest and shin guards.
Jerusalem A. Callan	40:1315 and 41 CFR, Section 102-74.380(b) - Willfully Damaging or	Unknown	3:2020-cr00247	Dismissed without prejudice	No details available.

⁷ <https://www.oregonlive.com/portland/2013/07/four-arrested-in-mount-tabor-r.html>

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Isaiah Jason Maza, Jr. ⁸	Destroying Property 18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-CR-00343	Dismissed (Maza is deceased)	Maza and a group of protestors began removing plywood protection on the front of the Courthouse. Once uncovered, Maza tried to kick in the window, struck it with a metal object that appeared to be a hammer. Someone else eventually broke the window and Maza placed a lit object into the broken window which exploded. A U.S. Marshal suffered injuries to both of his legs as a result of the blast. Maza was chased from the scene and arrested.
Dakota Kurtis Means	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:2020cr00392	Plead guilty Sentenced to time served (60 days) with 1 year of supervised release	Means threatened a federal contract employee with a paintball gun outside the Courthouse. ⁹
Josslynn Kreutz	40:1315 and 41 C.F.R. 102-74.385 Failing to Obey a	Unknown	3:2020cr00271	Dismissed with prejudice	No details available.

⁸ https://www.justice.gov/usao-or/pr/portland-man-charged-assaulting-deputy-us-marshal-explosive-device-during-courthouse-supervision.html?utm_medium=social&utm_campaign=theoregonian_sl&utm_source=facebook&fbclid=IwAR25krZHLQjWJ8VJ_SZV4ouq5qmUVDImluvy3CXIH6xygks5Ps_y-TcYU

⁹ https://www.oregonlive.com/crime/2021/01/portland-man-who-threatened-federal-contract-worker-with-paintball-gun-sentenced-to-time-served-year-of-supervision.html?utm_medium=social&utm_campaign=theoregonian_sl&utm_source=facebook&fbclid=IwAR25krZHLQjWJ8VJ_SZV4ouq5qmUVDImluvy3CXIH6xygks5Ps_y-TcYU

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Brodie Storey	Lawful Order (1) ¹⁰ 18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20-cr-00330	Dismissed with prejudice (DRA)	Storey attempted to tackle an officer. Storey was then arrested while he continued to resist and refused to comply with orders. Another protester assaulted the officer restraining Storey to try and help him.
Carly Anne Ballard	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20mj00163	Pending arraignment	Ballard was spotted near a breach in the fence surrounding the courthouse and was ordered to move away by officers. She refused and began to approach the officers. She was then placed under arrest for not complying and escorted into the courthouse for processing. There, she allegedly yelled profanities and kicked one of the arresting officers in the leg.
Andrew Steven Faulkner ¹¹	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20cr00203	Plead guilty, sentenced to three years of probation and home confinement. Government agreed to recommend probation.	Assaulted officers by pointing a high-powered laser at police officers. Possessed a sheathed machete.

¹⁰ **Note:** There were other failing to obey a lawful order cases, but they are not reflected here. Refer to this [DOJ list](#) of federal defendants.

¹¹ <https://www.justice.gov/usao-or/pr/seven-arrested-facing-federal-charges-after-weekend-riots-hatfield-federal-courthouse>

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Cody Beau Porter	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20cr00211	Information dismissed	Porter shot a laser at officers. Blank tried to stop officers from arrested Porter. Porter was also carrying a satchel containing 14 “commercial-grade” fireworks (pictures in complaint).
Jacob Michael Gaines ¹²	18:111(a)(1) - Assaulting a Federal Officer	Yes	3:20cr00223	Guilty to plea to felony, government agreed to recommend low-end of the guidelines	Gaines was observed damaging a barricaded entrance at the Courthouse with a 4 lb DeWalt construction hammer. Officers moved to detain him when Gaines struck one of the deputies with a hammer three times.
Lillith Grin	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20cr00290	Information dismissed	No details available.
Benjamin Bolen	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20cr00216	Guilty plea to misdemeanor assault on a police officer,	No details available.

¹² <https://www.justice.gov/usao-or/pr/texas-man-charged-assaulting-deputy-us-marshall-hammer-during-weekend-protests-portland>

Defendant	Charges	Arrested on Scene?	Case Number	Disposition	Description
Tyler John Gabriel	18:111(a)(1) - Assaulting a Federal Officer (1-5)	Unknown	3:20cr00280	Charged with misdemeanor, pending trial	No details available.
Noelle Angelina Mandolfo	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20cr00282	Information dismissed without prejudice	No details available.
Sabastian Dubar	18:111(a)(1) - Assaulting a Federal Officer	Unknown	3:20cr00289	Charged with misdemeanor, pending trial	No details available.
Dakotah Ray Horton	18:111(a)(1) and (b) - Assault on a Federal Officer with a Dangerous Weapon, Resulting in Bodily Injury (1)	No	3:20cr00419	Plea to felony, per plea agreement government agrees to recommend 24 months	Horton assaulted an officer that was arrested striking him several times from behind. He was identified through photos and videos from the events. At the time of arrest, Horton was carrying a HiPoint 9mm semi-automatic firearm in a holster.
Ty John Fox	18:231(a)(3) - Civil Disorder	Yes	3:2020cr00501	Charged with civil disorder, pending trial	Fox used a torch lighter to ignite a large, cylindrical firework, which he threw at officers. An explosion and flash was observed near the officers.

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA

v.

LARRY RENDALL BROCK

JUDGMENT IN A CRIMINAL CASE

Case Number: 21-140 (JDB)

USM Number: 24991-509

Charles Burnham

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1 through 6 of the Superseding Indictment filed on June 23, 2021.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1512(c)(2) and 2	Obstruction of an Official Proceeding and Aiding and Abetting..	1/6/2021	1s
CONT'D NEXT PAGE			

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/17/2023

Date of Imposition of Judgment

John D. Bates

Digitally signed by John D. Bates
Date: 2023.03.20 08:56:12 -04'00'

Signature of Judge

John D. Bates

U.S. District Judge

Name and Title of Judge

Date

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1A

Judgment—Page 2 of 8

DEFENDANT: LARRY RENDALL BROCK
CASE NUMBER: 21-140 (JDB)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1752(a)(1)	Entering and Remaining in a Restricted Building or Grounds.	1/6/2021	2s
18:1752(a)(2)	Disorderly and Disruptive Conduct in a Restricted Building or Grounds.	1/6/2021	3s
40:5104(e)(2)(A)	Entering and Remaining on the Floor of Congress.	1/6/2021	4s
40:5104(e)(2)(D)	Disorderly Conduct in a Capitol Building.	1/6/2021	5s
40:5104(e)(2)(G)	Parading, Demonstrating, or Picketing in a Capitol Building.	1/6/2021	6s

DEFENDANT: LARRY RENDALL BROCK
CASE NUMBER: 21-140 (JDB)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

TWENTY-FOUR (24) MONTHS ON COUNT ONE (1), TWELVE (12) MONTHS ON COUNTS TWO (2) AND THREE (3), AND SIX (6) MONTHS ON COUNTS FOUR (4), FIVE (5) AND SIX (6), ALL TO RUN CONCURRENTLY.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated at a Bureau of Prisons' facility close to Grapevine, TX.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LARRY RENDALL BROCK
CASE NUMBER: 21-140 (JDB)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

TWENTY-FOUR (24) MONTHS ON COUNT ONE (1) AND TWELVE (12) MONTHS ON COUNTS TWO (2) AND THREE (3), ALL TO RUN CONCURRENTLY.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: LARRY RENDALL BROCK
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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: LARRY RENDALL BROCK
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ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant must complete 100 hours of community service within 18 months of supervision. The probation officer will supervise the participation in the program by approving the program. The defendant must provide written verification of completed hours to the probation officer.
2. The defendant must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the United States Attorney's Office.
3. Within sixty (60) days of release from incarceration or placement on supervision, the defendant will appear before the Court for a re-entry progress hearing. Prior to the hearing, the probation officer will submit a report summarizing his status and compliance with release conditions. If he is supervised by a district outside of the Washington, DC metropolitan area, the United States Probation Office in that district will submit a progress report to the court within sixty (60) days of the commencement of supervision; upon receipt of the progress report, the Court will determine if his appearance is required.
4. The defendant must pay the balance of any restitution at a rate of no less than \$100 per month.

The Probation Office shall release the presentence investigation report to all appropriate agencies, which includes the United States Probation Office in the approved district of residence, in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the Probation Office upon the defendant's completion or termination from treatment.

DEFENDANT: LARRY RENDALL BROCK
CASE NUMBER: 21-140 (JDB)**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 180.00	\$ 2,000.00	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Architect of the Capitol		\$2,000.00	
Office of the Chief Financial Officer			
Attn.: Kathy Sherrill, CPA			
Ford House Office Building, Room H2-205			
Washington, DC 20515			

TOTALS	\$	<u>0.00</u>	\$	<u>2,000.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LARRY RENDALL BROCK
 CASE NUMBER: 21-140 (JDB)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 180.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
 The financial obligations are immediately payable to the Clerk of the Court for the U.S. District Court, 333 Constitution Ave NW, Washington, DC 20001. Within 30 days of any change of address, the defendant shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full. Restitution payments shall be made to the Clerk of the Court for the United States District Court, District of Columbia, for disbursement to the victim

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
 Defendant and Co-Defendant Names
 (including defendant number)

Total Amount

Joint and Several
 Amount

Corresponding Payee,
 if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

v.

LARRY BROCK,

Defendant.

:
:
:
:
:
:
:
:

Case No. 1:21cr140

NOTICE OF APPEAL

Please take notice that the defendant Larry Brock hereby appeals the final order entered in this case on March 22, 2023 (ECF 98).

Respectfully submitted,

By: /s/ Charles Burnham

Charles Burnham

D. Md. Bar 12511

Attorney for Defendant

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification (NEF) to all counsel of record.

Respectfully submitted,

By: /s/ Charles Burnham

Charles Burnham

D. Md. Bar 12511

Attorney for Defendant

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